

1 Emeritus facilities didn't think the staffing was adequate?

2 A Again, I think that the -- the executive directors and
3 the regional teams that were coming from Sunrise, which was
4 the previous owner of these communities, um, did not
5 understand Emeritus' models. At that point they were fairly
6 new, and so was Susan Rotella and she was also a former
7 Sunrise employee, um, who had those models in the past, as
8 well. So there was a conversation, but, again, I don't
9 think that it was expressed to Myron as a big concern, no.
10 I don't think so.

11 Q Okay. So Emeritus didn't tell Myron Taylor the big
12 concerns that the VP of operations and executive directors
13 of Emeritus had that same day about understaffing in
14 Emeritus facilities?

15 A Yes, I don't remember that that was discussed openly.

16 Q Okay. And, in fact, Emeritus didn't have any staffing
17 model or formula, correct?

18 A See, I don't know if we have a staffing model and
19 formula.

20 Q Well, you knew at that meeting in February of 2010
21 that there was no staffing formula or model, correct?

22 A That's what Budgie said. I'm not involved in any of
23 the staffing modules that we ever have in the community, so
24 I -- I wouldn't know any other way if we had or not.

25 Q Okay.

26 **(Video stopped.)**

27 MS. CLEMENT: Thank you, your Honor.

28 Plaintiffs would call Kathleen Boice.

1 THE COURT: Kathleen Boice.

2 Is she out in the hallway?

3 MS. CLEMENT: Yes, I'm sure she is. Thanks.

4 THE COURT: Okay. Thank you.

5 Ms. Boice, if you would please come forward to our
6 witness stand. And when you get there, if you would please
7 remain standing after you put your personal items down. You
8 can drape the coat over the stand right behind you. Raise
9 your right hand and face me.

10 Do you solemnly state under penalty of perjury that
11 the evidence that you will give in this proceeding shall be
12 the truth, the whole truth, and nothing but the truth?

13 THE WITNESS: Yes, I do.

14 THE COURT: All right. Please be seated.

15 Please state and spell your full name for the record.

16 THE WITNESS: Kathleen Boice. It's K-a-t-h-l-e-e-n
17 and Boice is B, like boy, o-i-c-e.

18 THE COURT: Counsel.

19 TESTIMONY OF

20 KATHLEEN BOICE, Witness called on behalf of the Plaintiffs,

21 DIRECT EXAMINATION

22 By LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of
23 the Plaintiffs:

24 Q Hi, Kathleen.

25 A Hi, Lesley.

26 Q Can you, um, please tell the jurors how you fit into
27 the Boice family?

28 A Joan Boice, mom as I called her, um, was my

1 mother-in-law, and I am married to her son, Eric.

2 Q And, um, how long have you known Joan Boice?

3 A Since I was 14 years old when we use to hang out at
4 Eric's house with a big group of people. And I'm 44 now
5 so...

6 Q So tell me, um, how long have you and, um, Eric been
7 married?

8 A Um, 22 and a half years.

9 Q And children?

10 A Um, we have two children. Our 15-year-old son is
11 Justin, and our 12-year-old daughter is Mikeli (phonetic).

12 Q And can you tell us about, um, your relationship with
13 your, um, your second mom, Joan?

14 A You know, she was, um, she was great. She was the
15 best mother-in-law I think a girl could have. Um, she
16 knew -- she knew how to help, but she also knew how to back
17 off and sort of let me learn what it was like to be married
18 and such. Um, she was just great, um, about teaching me to
19 cook. My mom didn't cook that well, so she did that. Um,
20 she gardened, she taught me how to do that. And she loved
21 china and tea. That was her one vice in life was sneaking a
22 piece of china that you would buy at the department store.
23 So she shared that a lot with me, too.

24 Q How about did your, um -- did Joan help with raising
25 your kids at all?

26 A Yes. She -- she was a great grandmother. She was the
27 kind that would get down on the floor and, um, play with the
28 kids. Um, she bought the car seat and the, you know,

1 port-a-crib before they were ever born so that, you know,
2 she could -- we could feel comfortable over there and the
3 kids could feel comfortable. Um, she was just great. She
4 was great with me too in that she was kind of ahead of her
5 time and encouraged me to be a great mom but also to follow
6 my dreams and, you know, if that was a career or whatever.
7 She -- she was just really supportive.

8 Q So we have heard and seen some e-mails that came from
9 you about your job. And can you tell us who you work for
10 and what do you do?

11 A Um, currently I work for Sutter health. I have a job
12 where I work with different physicians and nurses and teams
13 to prevent mistakes from happening or if a mistake does
14 happen, to prevent it from ever happening again.

15 Q And back in 2008 when Joan was living with Myron at
16 Emerald Hills, what was your job?

17 A I was, um, an interim deputy compliance officer. My,
18 um, facility in the Bay Area was a Sutter facility, and they
19 loaned me to, um, the corporate office to help physicians
20 and nurses and, um, anybody else who was governed by a
21 regulation to help them understand what the regulation was
22 and how -- how they could abide by it and if they broke it
23 what did we need to do, all of that kind of stuff.

24 Q Okay. And do you actually yourself have any health
25 care training?

26 A No, I don't have any health care training.

27 Q And how about legal training, are you a lawyer?

28 A I am not a lawyer.

1 Q Okay. Okay. And, um, can you tell us about
2 interactions that you had with Joan and Myron before they
3 moved up to Roseville to the Palms as it relates to, um,
4 their health care, were you involved at all in that?

5 A Yes. I -- I would say in about 2004 I started
6 accompanying mom and dad to -- or specifically mom to
7 doctor's appointments. She just asked me to come. And then
8 in 2006, after we had moved up to, um, Weimar, um, which is
9 above Auburn, um, mom -- let's see. Mom and dad were still
10 living in San Lorenzo. I was traveling from Weimar down to
11 Palo Alto at that point, and I kept getting phone calls from
12 dad all of the time. Mom -- what's wrong? Something is
13 wrong with mom, etcetera. Um, so I -- I did a lot of, um,
14 dropping in on them when, um, when I was down in the Bay
15 Area, which was pretty much every week, and helping
16 troubleshoot or take them to a physician's appointment.

17 Q And what's your understanding about how it came to
18 pass that Joan and Myron moved up to the Palms in Roseville?

19 A On my weekly visits I could see that it was getting
20 more difficult for dad to keep the household running. Um,
21 he -- he wasn't very good at cooking. Mom had always done
22 that. So it was really hard. And, um, those visits kept
23 getting -- now it was in the middle of the day. I would
24 have to leave work unplanned -- and not that I -- I didn't
25 mind it, it's just that I was supposed to be at work.

26 And so I -- I -- we went to a physician appointment,
27 um, dad, mom and I, where the doctor suggested, You really
28 should be looking into some other kind of care, because it

1 was making dad really exhausted and mom still wasn't getting
2 quite what she needed.

3 Q Did you guys try alternatives, anything else before --

4 A Oh, yes. Before that we, um, we hired some visiting
5 angels. And, um, they came in -- I would meet with them --
6 on one of my trips down I would meet, you know, choose the
7 person with mom and dad, they would come visit at their
8 house, orient them to what we needed them to do and then I
9 would go away. And sometimes by the time I came back the
10 following week dad would have let them go because he just
11 felt like he doesn't need them or various reasons. It just
12 didn't -- didn't mesh. It was hard for them to have
13 somebody that they didn't know coming into their home.

14 Q Now, um, did you participate at all in the move to the
15 Palms?

16 A Yes. Um --

17 Q Tell the jurors what you did.

18 A Well, let's see. My job was to -- well, I was with
19 mom and dad when -- when we brought them up for the, um,
20 pre-evaluation. It was a couple of weeks before -- the
21 Palms hadn't said they had accepted them or not yet. And I
22 sat and helped fill in the blanks about what things mom
23 liked to do, maybe some of her medicines that she was on.

24 And then, um, the weekend of the move, I helped move
25 them in, um, set up their room as much as it was like back
26 at the -- back at their house, um, helped determine what
27 clothes we should bring for mom and dad. Um, just generally
28 moved them in.

1 Q And after, um, Joan and Myron had moved into the
2 Palms, um, what was your routine with regard to visits, if
3 any?

4 A Um, we would -- I would visit at least two, maybe
5 three times a week. Um, they were -- the -- the way that I
6 would come home from the Bay Area and then after when I was
7 staying up there, um, they were right on the way home from
8 work, so I would drop by. If I had a late meeting, late
9 morning meeting, I would drop by in the morning before I --
10 I went to work.

11 Q And, um, what was your experience like at the Palms
12 with your mom -- well, with Joan's care?

13 A Um, they were great. They -- we, um -- we were pretty
14 amazed. They -- they had, um, a wonderful memory care
15 director. They had a great executive director. Um, there
16 was someone there that was like a resident director. She
17 was good. They called us for every tiny little thing. Um,
18 they called us about dad as well. They made sure she had
19 her meds, um, she had her activities all of the time. They
20 had dad active. He loved to go and talk to everybody. So
21 it was -- it was a really good experience for all of us
22 actually.

23 Q And we have already heard a lot about the move to
24 Emerald Hills. Were you involved in any way with touring or
25 finding Emerald Hills or anything like that?

26 A Not with touring or finding Emerald Hills, no.

27 Q And what was your first experience with Emerald Hills?

28 A Um, a few weeks before mom and dad moved from the

1 Palms to Emerald Hills I took a check over to them. They --
2 they needed, um, a check for mom to move in and dad to move
3 in. And when I was there I, um, was greeted by Melissa
4 Gratiot. She was the marketing director. And I asked her
5 if I could see what a room might be that mom would have, and
6 so she, um, brought me into the Memory Care Unit. It looked
7 very similar to what they had at the Palms. And they had an
8 aviary in the lobby, it was kind of neat, little finches.
9 So it was -- it looked nice.

10 Q Okay. And then, um, we have heard from your husband
11 about the day of move-in. Can you tell us, um, about
12 your -- what you did on the day that, um, Joan and Myron
13 moved in, what was your responsibility?

14 A Um, the boys, their job was to get all of the
15 furniture in. My job was to take care of mom. So I, um,
16 was involved in driving her from the Palms and getting, um,
17 her paperwork that they wanted to be sure that Emerald Hills
18 received. Um, I sat with her in the lobby while we waited
19 for, um, an evaluation because they didn't -- they didn't do
20 the evaluation until the day she moved in.

21 Q And then at some point, um, did you -- were you -- did
22 you participate in the evaluation?

23 A Yes, I was there for the evaluation.

24 Q And who, um, who did the evaluation?

25 A Um, Peggy Stevenson, the nurse for the facility.

26 Q And where did the evaluation take place?

27 A Um, it happened in the, um -- *what did they call it* --
28 the activity room within the, um, Memory Care Unit.

1 Q Okay. And about how long do you think that evaluation
2 took place?

3 A It only took five minutes.

4 Q And, um, did Peggy ask questions of you or -- or of
5 Joan during the evaluation?

6 A Um, she asked her her name and when mom couldn't
7 say -- she said, you know, What's your name and mom said,
8 um -- she just nodded and then looked at me. And so then
9 she says, Oh, I didn't think you could say your name. And
10 then she asked me questions. Very, very cursory. Um, prior
11 to that in the lobby I had filled out this form, um, about
12 mom's likes and dislikes. We didn't go over that, but we
13 just went over things like, um, can she stand, can she sit,
14 all of those types of things.

15 Q And, um, after that, um, evaluation did you have any
16 other contact with Peggy?

17 A Um, we did.

18 Q Okay. And was that weeks or -- later or months later?

19 A It was on November 17th when we had a meeting with
20 Peggy and Nancy Cordova, the executive director.

21 Q Okay. And so after, um, that initial evaluation, um,
22 did you go home to your family?

23 A Um, yeah. I stayed a little bit, just to make sure
24 mom was settled and that the caregiver had her. They
25 brought her into a room and they were getting her ready for
26 dinner and then I -- I went home.

27 Q Okay. And, um, over the next, um, week did you fill
28 out some paperwork related to Joan?

1 A Yes. Eric and I filled out, um, mounds of paperwork,
2 like two stacks for both, um, Joan and dad, Myron.

3 Q Okay. And was one of those documents something called
4 a pre-placement appraisal?

5 A Boy, I don't recall if it was a pre-placement
6 appraisal. It was the documents that we filled out for
7 Emerald Hills. We had filled out those kinds of documents
8 or they had filled them out with us prior to mom moving in
9 when we were at the Palms, and then with Emerald Hills we
10 filled them all out after mom had moved in.

11 MS. CLEMENT: All right. At this time, your Honor, I
12 would like to show Exhibit 3, pages 73 and 74.

13 Erik, can you bring up the top, please, so we can see
14 it? Thank you.

15 Q (By MS. CLEMENT) Is this your handwriting, Kathleen?

16 A Yes.

17 Q Okay. And did you fill this out? It's called a
18 pre-placement appraisal.

19 A Yeah. That is one of the forms that I filled out.

20 Q Okay. And did you fill this out after Joan had moved
21 in?

22 A Yes, she had already moved in.

23 Q Okay. And did you fill this out -- were you truthful
24 in filling this out?

25 A Yes. I wanted -- yeah.

26 Q And were the things you wrote in here things that you
27 had also related to Peggy in the evaluation?

28 A Oh, yes.

1 Q Okay. And, um, did you let them know in that that
2 Joan needed to have her walker with her at all times?

3 A Yes. She needed to have her walker in front of her.

4 Q Okay. Erik, can you take us to the next section,
5 please?

6 And, um, you listed off the things that Joan liked to
7 do?

8 A Uh-huh.

9 Q Is that "yes"?

10 A Yes. Thank you.

11 Q That is all right. And how did you know Joan liked to
12 do coloring and simple puzzles, that she liked to eat and
13 listen to classical music?

14 A Um, she would always listen to classical music. In
15 fact, Eric would complain about it when we would visit
16 before he moved -- they moved. But, um, the Palms did a
17 great job at keeping mom engaged and, um, very active. So
18 she would do puzzles there. She would color. We had
19 several of her craft projects at home. She would decorate
20 her room with them. Um, and the eating, she always enjoyed
21 eating. We went to lunch quite a few times, and she ate
22 well at the Palms.

23 Q Okay. And can you give us the next section, please,
24 Erik?

25 Okay. And then did you indicate that, um, mom, Joan,
26 liked to be out of bed all day?

27 A Yes.

28 Q Okay. And the next page, Erik. All right. And,

1 Erik, can you take that first -- just the top section and
2 make that bigger because it's hard to see? Is that as big
3 as it gets? Okay.

4 Can you guys read that? Kind of tough, huh?

5 Okay. So, um, did you go down this list in order,
6 like as you read it you checked each thing?

7 A Yes.

8 Q Okay. So you initially checked the box "ambulatory",
9 true?

10 A Yes.

11 Q And then as you went through you figured out what
12 ambulatory meant and you checked all of the boxes correctly
13 there?

14 A Yeah. Well, it's --

15 MR. REID: It's leading, your Honor.

16 THE COURT: Sustained.

17 MS. CLEMENT: Okay.

18 Q (By MS. CLEMENT) Did you know what the term
19 "ambulatory" meant for Title 22 at the time you started
20 filling out this form?

21 A No.

22 Q Did anyone from Emeritus help you fill this form out?

23 A No.

24 Q So you did this at home on your own?

25 A Yes.

26 Q And so prior to that did you know that for Title 22
27 ambulatory meant that Joan had to be able to demonstrate the
28 physical and mental ability to leave a building without the

1 assistance of a person or the use of a mechanical device and
2 had to be able to do all of the following four things on the
3 list?

4 A No.

5 MR. REID: The question is vague. It lacks
6 foundation. It's leading.

7 THE COURT: I don't think it's vague. Whether or not
8 it lacks foundation, we will have to wait and see. And
9 leading is okay at this point.

10 Q (By MS. CLEMENT) Was Joan able to walk without any
11 physical assistance at that time?

12 A No.

13 Q Was she mentally and physically able to follow signals
14 and instructions for evacuation like if there was an
15 emergency?

16 A No.

17 MR. REID: Lacks foundation.

18 THE COURT: Lacks foundation that this witness could
19 answer that question?

20 MR. REID: Correct.

21 THE COURT: Overruled.

22 Q (By MS. CLEMENT) Was Joan able to use evacuation
23 routes in a building including stairs if she needed to, by
24 your observation?

25 A No.

26 Q Could she evacuate reasonably quickly, in other words,
27 walk directly to a route without hesitation in an emergency?

28 A No.

1 Q Can you put up the functional section? Okay.

2 So in this section did you write that Joan couldn't,
3 um -- strike that.

4 That Joan couldn't -- wasn't able to go up and down
5 stairs easily without help?

6 A Correct.

7 Q And, um, that she was feeble or slow, used a walker,
8 and she was unable to get in and out unassisted; is that
9 right?

10 A Yes.

11 Q And if she used a wheelchair she couldn't get in and
12 out of that unassisted either, true?

13 A Yes, true.

14 Q And, um, what was your experience of when you would
15 use a wheelchair with Joan up to that point in time?

16 A Mom was, um, really good with her walker. Um,
17 sometimes she refused to use it but if she -- she was good
18 with it. Sometimes if we would take her to the doctor or
19 out to lunch or dinner we would use a wheelchair just
20 because she was a little slow and that made it easier for
21 her and then she wasn't as tired when she got to the table.

22 Q Okay. And then on the next section for services
23 needed did you indicate that Joan needed help transferring
24 in and out of bed and getting dressed?

25 A Yes.

26 Q And, um, she was going to need help with her bathing
27 and personal hygiene and taking care of her care?

28 A Yes.

1 Q And she was going to need help with moving about the
2 facility?

3 A Yes.

4 Q And she was going to need help with eating, she needed
5 to have her food cut up and cuing?

6 A Absolutely.

7 Q And she needed toileting assistance and she required,
8 um, diapers and needed help to change it?

9 A When she first came to the Palms, yes -- or Emerald
10 Hills, yes.

11 Q And she needed help with her medication?

12 A Yes.

13 Q Could Joan administer her own medication?

14 A No.

15 Q Um, and she wanted her to -- them to know that she
16 needed special observation at night and please check her
17 several times a night due to her confusion?

18 A Yes. Because sometimes she would get out of bed or
19 try to get out of bed and we were afraid she would fall.

20 Q Um, and she needed help brushing her teeth, she needed
21 someone to cue her?

22 A Yes.

23 Q And you wanted to make sure that they kept any
24 dangerous items out of her reach?

25 A Yes.

26 Q Bottom section.

27 And then is -- did you sign Eric's name to that?

28 A Yes.

1 Q Okay. And is that something that you and Eric would
2 do for each other if you guys were filling things out, that
3 sometimes you would sign things for Eric?

4 A Yes.

5 MR. REID: It's leading, your Honor.

6 THE COURT: Sustained.

7 THE WITNESS: We were sitting next to each other and
8 showing each other the papers --

9 MR. REID: Your Honor, there is no question and move
10 to strike the answer.

11 THE WITNESS: Sorry.

12 THE COURT: Granted.

13 Is this your first time testifying?

14 THE WITNESS: Yes.

15 THE COURT: Okay. Wait -- if there is a -- if there
16 is a, um, objection, wait for the ruling on the objection
17 before you answer.

18 THE WITNESS: Okay. All right

19 THE COURT: Thank you.

20 THE WITNESS: Thank you.

21 MS. CLEMENT: Terrance, if you could get the lights.
22 Thanks.

23 Q (By MS. CLEMENT) Could you tell us what was your
24 practice back, um, in September of '08, um, with regard to
25 filling out paperwork for mom or Myron?

26 A Eric and I sat next to each other and completed the
27 paperwork, and -- and I would help him by signing his name
28 on some of it because they were very thick stacks.

1 Q Okay. Now, when your mom -- Joan was at the Palms,
2 um, did you guys ever have care plan meetings or review care
3 plans that the Palms prepared?

4 A Yes.

5 Q And, um, at Emeritus did you ever see a care plan?

6 A No.

7 Q Did they ever mail one to you or ask you to review it
8 or sign it?

9 A Never.

10 Q Did you ever have communications with Alicia Parga in
11 the -- who is the Memory Care Unit director about, um, Joan?

12 A Yes, I did.

13 Q And can you tell the jury when is the first time you
14 remember talking with Alicia about concerns you had with
15 Joan?

16 A During the first week when mom was at Emerald Hills I
17 came in, just popped in to check on her, and she was sitting
18 alone in a wheelchair, which I thought was strange because,
19 you know, she didn't normally sit in a wheelchair. And she
20 was alone in the activities room, no television on or
21 anything, and -- and her walker was nowhere to be found.
22 And, um, so I was concerned. I thought, oh, if she tries to
23 get out of that chair, you know, she might not be able to
24 but if she tries, she will fall and hurt herself. So I went
25 and found Alicia and just asked her, you know, Can you make
26 sure that the walker is there? Don't leave her alone. It's
27 really important. And, um, I felt like, okay, that is good,
28 I let them know. And we were just kind of in that

1 getting-to-know-you stage between Emerald Hills and mom.

2 Q Okay. And did Alicia say anything to you about how
3 she would make sure that that didn't happen again or
4 anything like that?

5 A Alicia was, um, apologetic. She said, Oh, we don't
6 usually leave people alone. I'm sorry. It won't happen
7 again. And thanks for letting us know.

8 Q Do you remember having any other communications with
9 Alicia in the first month, um, that Joan was there?

10 A Yes.

11 Q And can you tell the jurors what you remember about
12 that?

13 A Um, Alicia and I had a little one-on-one, um, to talk
14 about mom and how things were going. And, um, you know,
15 there were a few other glitches, so we talked through those.
16 And she mentioned at that time that she thought mom could
17 benefit from some physical therapy. So I said, Oh, okay,
18 great. And what do you want me to do to get that taken care
19 of? Um, and she said, Don't worry about it, I'll get it
20 taken care of.

21 Q All right. Did you ever follow-up with Alicia about
22 that?

23 A Yes.

24 Q And, um, when you followed up with Alicia, how -- how
25 much later was that in your -- in Joan's stay?

26 A Um, let me think. Probably it was a couple of weeks
27 later because I had -- I'm sorry. Go ahead.

28 Q Okay. And why do you remember that being a couple of

1 weeks later?

2 A Um, because she and I -- well, I was just checking in,
3 How's the physical therapy going? And she said she hadn't
4 called anybody.

5 Q And did she indicate at that time that she would then
6 call and get some physical therapy?

7 A Yes, she did.

8 Q When did you first learn of any type of a sore or
9 wound on Joan while she lived at Emerald Hills?

10 A It was on November 3rd.

11 Q And can you tell the jurors what your first
12 understanding is about any type of a wound that you heard
13 about regarding Joan?

14 A Um, we had talked to a caregiver -- and I can't
15 remember if we called her or she called us back, how it
16 went -- but she mentioned to us that, I don't know if
17 anyone's told you yet, but mom has a bunion on her right
18 foot and I thought you should know.

19 Q And what -- what do you understand, um, was done about
20 that in response to that call?

21 A Eric called, um, mom's doctor and got her an
22 appointment for the next day so it could be looked at.

23 Q And after that appointment, um, what did you learn
24 about Joan's condition as -- after that appointment with
25 Dr. Awan?

26 A Um, that her -- that the bunion was, um, kind of
27 scabbed over and that it was healing and, um, that it was
28 okay.

1 Q Now, did you have any concerns at that time when you
2 heard about this, um, bunion, um, wound on your mom, on
3 Joan?

4 A Um, I remember that one concern was just that it was
5 bleeding and I didn't think bunions bled, but I'm not a
6 bunion expert.

7 Q And after -- after this, um, learning about this
8 bunion, did you learn anything else about Joan's condition
9 that had been changed or reported as of the doctor's
10 appointment on November 4th?

11 A Um, Eric mentioned that someone at Emerald Hills told
12 him that they thought mom might have had a stroke, um, or
13 some small strokes, and so he had reported what they had
14 said to him to the doctor.

15 Q Now, following that appointment with Dr. Awan, did you
16 do anything to try to speak with anyone at Emerald Hills?

17 A Um, yes. I went in one day, it was probably the day
18 after the appointment, and, um, noticed that mom's bunion
19 was bleeding through. And, um, I asked the caregiver if I
20 could see it, I wanted to see what the wound looked like,
21 and she said she couldn't unwrap it right then because she
22 was too busy.

23 Q And after hearing that, what did you -- did you
24 follow-up with anyone?

25 A Yes. I, um, I wanted to speak with Nancy or Peggy to
26 find out what's happening, what is this bunion, and how did
27 it -- how long have you known about it. It just felt funny.
28 So, um, I reached out for, um, a phone call or meeting and

1 left several messages to try and get a meeting time.

2 Q And how long did it take to get a meeting?

3 A Um, they called back about two weeks later and offered
4 an appointment, um, the following Monday. So about five
5 days after that.

6 Q All right. And, um, was this the meeting that you had
7 on November 17th?

8 A Yes.

9 Q And who was in attendance in that meeting?

10 A Um, I was in attendance, my husband, Eric, Peggy
11 Cordova and, um -- okay, sorry -- Nancy Cordova and Peggy
12 Stevenson, and then, um, Melissa Gratiot joined us for the
13 meeting also.

14 Q And did you bring anything with you to the meeting?

15 A Yes.

16 Q And what did you bring?

17 A A list of, um, concerns and kind of an agenda for the
18 meeting.

19 Q And did you share that agenda with, um, Peggy and
20 Nancy and Melissa?

21 A Yes, I did.

22 Q And, um, did you go over your concerns that -- that
23 you raised at that meeting that you had in your little
24 agenda?

25 A Yes.

26 Q And how -- how -- what was the response to the
27 concerns that you were raising?

28 A It was, they were concerned. Um, some of the things

1 that I talked about they hadn't heard about. Um, they were
2 appropriately, you know, concerned and saying, Well, we will
3 make it better. We will do something -- they actually could
4 verbalize what they were going to do. Um, they were
5 apologetic. And then they really affirmed that they were
6 going to get things done. So it was actually a very
7 assuring meeting. It took about an hour and a half and we
8 talked a lot during that time.

9 Q Now, in that meeting did you ask to see, um, a care
10 plan?

11 A Yes.

12 Q And before the meeting ended, did you ever get to see
13 one?

14 A No.

15 Q Was there a discussion at that meeting about Hospice?

16 A Yes.

17 Q And, um, how had you first learned anything about --
18 at Emerald Hills about the topic of Hospice, was it first
19 raised in that meeting or had you heard it previously?

20 A I had heard of it previously from Alicia.

21 Q And what did you hear from Alicia about Hospice?

22 A Alicia had called about five days before the meeting
23 and mentioned that, um, they were having trouble with mom
24 and that they were having to give her more care than they
25 thought they would have to. And they were talking about
26 either they would need to move her to another facility or we
27 could choose to put her on Hospice and that would enable mom
28 to be able to stay at Emerald Hills.

1 Q And did you raise that as one of your topics at -- in
2 your meeting?

3 A Yes.

4 Q And who -- who, if anyone, responded to that?

5 A Um, both Nancy and Peggy responded.

6 Q And can you tell us what they said?

7 A Um, they talked about how -- we were concerned because
8 you hear the word "Hospice" and you think end of life and we
9 didn't know that mom was there. So they explained that, no,
10 that is not really what it is. You can bring people in and
11 they will, um, give her extra care. That way, she can stay
12 at Emerald Hills, um, she doesn't have to go through
13 transfer trauma. She can also get the care she needs and
14 she won't have to move out to someplace that she is not
15 familiar with.

16 Q Did they say anything to you about Hospice meant that
17 your mom was dying?

18 A They said that's not necessarily what it means but,
19 um -- and they said people graduate from Hospice all of the
20 time.

21 Q Now, did you, um, have a conversation with -- well,
22 let me ask you this: How come Myron wasn't in the meeting?

23 A Um, dad -- dad had such a hard time with mom, um --
24 with mom's illness. He -- he would get really upset. Um,
25 you know, if somebody said she needs a shower cap, we would
26 all instantly get urgent voice mails saying, Mom needs a
27 shower cap. But he just didn't know how to -- how to take
28 all of those things.

1 So when we started having the concerns and dad had
2 concerns as well, we scheduled the meeting. Um, we -- dad
3 knew about it. We asked him if he wanted to be in there,
4 and he -- he really wanted to rely on us to help him out and
5 let him know what happened afterwards.

6 Q Um, now, you just said Myron had had some concerns.
7 Can you tell the jurors what kind of concerns Myron had
8 relayed to you prior to that meeting?

9 MR. REID: That's hearsay, your Honor.

10 THE COURT: Is there an exception?

11 MS. CLEMENT: State of mind of the witness.

12 THE COURT: Her state of mind is not an issue in this
13 case. She is not a plaintiff.

14 MS. CLEMENT: Well, with regard to the communications
15 that she --

16 THE COURT: Wait. I have ruled on that.

17 MS. CLEMENT: Okay.

18 Q (By MS. CLEMENT) Um, how did you know Myron had
19 concerns?

20 A Dad called us and let us know.

21 MR. REID: It's hearsay, your Honor.

22 THE COURT: As far as the answer went, it's okay as
23 long as it stops there.

24 Q (By MS. CLEMENT) Did you include concerns that dad
25 had in your agenda, um, that you presented at the meeting
26 with Nancy and Peggy and Melissa?

27 A Yes.

28 Q Did dad have concerns at all about mom staying in bed

1 or in a wheelchair, anything like that?

2 MR. REID: That's hearsay, your Honor.

3 THE COURT: Ladies and gentlemen, it's time for our
4 afternoon break. Leave your notebooks on the chairs.
5 Remember the admonitions.

6 I will see you back about 3:20.

7 **(The following proceedings were held in open court, outside**
8 **the presence of the jury:)**

9 THE COURT: You may step down. Thank you. We will
10 see you back, ma'am.

11 Okay. Everybody be seated, please.

12 Mr. Reid, so that I can understand your position with
13 respect to that -- well, we are all aware of the fact that
14 Mr. Boice is diseased, Myron Boice is deceased.

15 MR. REID: Correct.

16 THE COURT: Is it going to be your intention to object
17 to any questions about what he might have said at any time?

18 MR. REID: To this witness, yes.

19 THE COURT: All right. Ms. Clement, if this is an
20 out-of-court statement, if it's offered for the truth of the
21 matter asserted it initially becomes hearsay. Is there any
22 exception that you can offer the Court?

23 MS. CLEMENT: I need to think about that, your Honor.
24 I'm sorry. I'm having -- I'm sorry. My eye -- I'm having a
25 hard time right at the moment just with my eyes and
26 thinking. Sorry. I apologize.

27 THE COURT: Well, why don't we take our break now and
28 everybody come back at about 3:15, okay?

1 MR. REID: Yes, your Honor.

2 MS. CLEMENT: Your Honor, just on that -- something
3 that Mr. Reid just said. He said, As to this witness. I'm
4 just wanting to seek clarification if it's the Defendant's
5 intent to ask its employees things that deceased Myron Boice
6 said.

7 MR. REID: I don't know, your Honor. I haven't
8 thought that far ahead.

9 MS. CLEMENT: I think that is exactly what they want
10 to do.

11 MR. REID: Your Honor --

12 THE COURT: Okay. Let's just take our break. We are
13 in recess.

14 (Recess.)

15 (Court Reporter switch.)

16 ---oOo---

17

18

19

20

21

22

23

24

25

26

27

28

1 **(The following proceedings were then had in open**
2 **court, outside the presence of the jury.)**

3 THE COURT ATTENDANT: Please come to order.
4 Department 45 is in session.

5 THE COURT: Okay. Miss Clement.

6 MS. CLEMENT: Yes, your Honor.

7 We're not offering it for the truth of the matter
8 asserted. It's being offered to explain why Miss Boice
9 took the action that she did, to give notice to the
10 defendant's directors, wanting them to act on their
11 concern -- on her concerns and Myron's concerns. And
12 that's how it got into the agenda.

13 THE COURT: Okay. So essentially you are not
14 concerned whether or not what Myron Boice said to her to
15 cause her to act was true or not, correct?

16 MS. CLEMENT: Correct.

17 THE COURT: Mr. Reid.

18 MR. REID: Then why she acted isn't relevant. I
19 mean, it sounds like she's trying to -- she wants to have
20 Kathleen Boice talk about what she told my clients -- or my
21 client's employees. And that's fine, but the statements by
22 Myron Boice to Kathleen Boice are hearsay. And I don't --
23 I don't think that why she raised those is relevant.

24 THE COURT: No. Why she raised it would be relevant
25 to the case. That is -- I mean --

26 MR. REID: Okay.

27 THE COURT: -- if she's making things up, that would
28 be relevant to the case, correct?

1 MR. REID: True.

2 THE COURT: If she had no basis, or if what she was
3 relating was inaccurate.

4 MR. REID: True.

5 THE COURT: That would also be relevant to the case.

6 So when I asked Miss Clement earlier was there any
7 exception to the hearsay rule, and she responded, you know,
8 her state of mind, her state of mind is not directly
9 relevant to the case. But if what was told to her is
10 offered to prove the acts or conduct that she next engaged
11 in, then that is an exception to the hearsay rule. It
12 comes under the state of mind exception; although, people
13 sometimes say state of mind and I don't think they
14 necessarily are referring to somebody's actual state of
15 mind more than anything else.

16 In any event, it's either not for the truth of the
17 matter asserted, meaning she doesn't care whether or not
18 what Myron said was true are not, which is what she's
19 telling me now, it's used to explain the conduct of the
20 witness.

21 So what I propose to do is --

22 THE COURT: Michelle, you don't have the last
23 question, do you?

24 THE COURT REPORTER: No.

25 THE COURT: Do you have the last question in mind,
26 Miss Clement?

27 MS. CLEMENT: Did you write it down?

28 Sorry.

1 THE COURT: I think it was something to the effect,
2 *What did Myron Boice --*

3 MS. CLEMENT: Oh. *Did you include concerns Myron*
4 *had that you presented at the meeting? Yes. Did he have*
5 *concerns --*

6 THE COURT: Well, why don't you tell me what the
7 question is going to be now, and let's look at that.

8 MS. CLEMENT: Okay. And the question was, *Did dad*
9 *have concerns about mom getting out of bed and walking?*

10 THE COURT: That's the question you're going to ask
11 her?

12 MS. CLEMENT: Yes.

13 THE COURT: Well, that question standing alone
14 doesn't explain any act.

15 MS. CLEMENT: Okay. So, *Did concerns of Myron's get*
16 *into your agenda? Yes. What were those concerns that made*
17 *it to your agenda? Why were you bringing those to their*
18 *attention? What was their response?*

19 THE COURT: Miss Clement, it needs to be an
20 appropriately worded question. Otherwise, I'm going to
21 anticipate I'm going to get a series of objections.

22 So when you bring her back and we put her on the
23 stand, as long as the question is appropriately worded, it
24 will be allowed. If I rule that it's sustained, it's my
25 way of telling you that you haven't quite gotten it into
26 the ballpark.

27 MS. CLEMENT: Thank you, your Honor.

28 THE COURT: Let's bring the jury in.

1 THE COURT ATTENDANT: Yes, ma'am.

2 THE COURT: Unless -- Mr. Reid, is there something
3 else?

4 MR. REID: Just one -- if it's allowed --

5 THE COURT: You want a limiting instruction?

6 MR. REID: Yes, your Honor.

7 THE COURT: Then just request it.

8 MR. REID: Very good.

9 **(The following proceedings were then had in open**
10 **court, in the presence of the jury.)**

11 THE COURT ATTENDANT: Please come to order.
12 Department 45 is once again in session.

13 You may be seated.

14 Q. (By MS. CLEMENT) Kathleen, what, if anything, did
15 Myron -- oh, sorry.

16 THE COURT ATTENDANT: It's okay.

17 Q. (By MS. CLEMENT) Kathleen, can you tell the jurors,
18 what, if anything, Myron told you that prompted you to
19 bring concerns of his to the attention of the directors in
20 terms of -- in order to give them notice of Myron's
21 concerns?

22 MR. REID: I'm going to object that I think that
23 question calls for hearsay.

24 THE COURT: The objection's overruled.

25 MR. REID: May I ask for a limiting instruction,
26 your Honor?

27 THE COURT: Yes.

28 All right. Ladies and gentlemen, obviously, Myron

1 Boice is not here and will not be testifying in this case.
2 So I'm allowing the witness to answer this question, not
3 because what she is going to tell you that Myron Boice can
4 be shown to be accurate or inaccurate, but only to explain
5 why she did what she did. (Verbatim.)

6 I hope you're following me on that. Thank you.

7 Go ahead.

8 Q. (By MS. CLEMENT) Okay.

9 A. Thank you.

10 Dad was concerned. Because he had a practice of
11 going in and bringing mom berries or nuts or something
12 every day because she -- they just would spend a little
13 time together. And he would go in and she would be in bed.
14 And so he brought that to our attention, saying, "Why is
15 she in bed?" Or "Why is she in the wheelchair?" So we
16 asked the same thing and were told, *Oh, it's because she*
17 *was tired. She was up, you know, three hours ago and she*
18 *walked up and down the hallway.* But every -- often when
19 we would go in she would be in bed as well.

20 Q. Did you also raise those concerns in your meeting
21 with Nancy and Peggy and Melissa?

22 A. Yes, we did.

23 Q. And what was the response?

24 A. Peggy didn't know much about it, because she just
25 said I -- *You know, I can't really speak to it.* And they
26 said that they had -- were having problems with the
27 director, Alicia Parga, and she was on -- was on leave for
28 two weeks and they couldn't really tell us why. And they

1 said they would look into it and it shouldn't be that way.

2 Q. After that meeting, did you write to -- well, strike
3 that.

4 At the time of the meeting, did you know that home
5 health was now involved?

6 A. I can't recall.

7 Q. And did you know at some point in time that home
8 health came and got involved?

9 A. Yes.

10 Q. And what was your understanding -- well, strike
11 that.

12 Did you know at that time how frequently home health
13 was going to be in the building?

14 MR. REID: Vague as to time, your Honor.

15 THE COURT: Sustained.

16 MS. CLEMENT: Okay. I'll rephrase.

17 Q. (By MS. CLEMENT) Did you learn at some point in
18 time prior to Joan leaving the facility that home health
19 was visiting?

20 A. Yes.

21 Q. And what was your understanding of what the purpose
22 of home health's visits were?

23 A. Um, my understanding prior to -- I'm trying to
24 think. Yeah. My understanding was that there was -- it
25 was a physical therapy. They were there because physical
26 therapy had finally been ordered at the November 4th
27 appointment with mom -- with mom. And I know now that
28 there had been some wound care, but I wasn't aware at that

1 time that that -- that type of thing was being done.

2 Q. Okay. Now, I'd like to take you through some
3 e-mails that you wrote and responses that you got.

4 A. Okay.

5 MS. CLEMENT: At this time, your Honor, we'd like to
6 put up 5015, which has already been admitted.

7 THE COURT: All right.

8 MS. CLEMENT: Erik, let's start on page 13.

9 Q. (By MS. CLEMENT) And we're going to go through
10 these in chronological order. Okay?

11 A. Okay.

12 MS. CLEMENT: Erik, you're going to have to make
13 that a little bigger. Thank you, sir.

14 Okay. That's good.

15 Q. (By MS. CLEMENT) What was the purpose of this
16 e-mail that you sent on November 18th, at 4:44 p.m., the
17 day after the meeting with Nancy and Peggy and Melissa?

18 A. We had been assured that there would be some things
19 that would change and that they were -- they heard our
20 concerns. So we were thanking them. And it felt like we
21 were part of a team. We were there all to be for mom. And
22 this e-mail was just thanking them for that. And I really
23 wanted to keep the communication open.

24 Q. And in this -- did you also specifically request
25 some information from Peggy?

26 A. Yes. Peggy did mention that -- or who was it?
27 Somebody mentioned that there was going to be an evaluation
28 on mom related to the bunion, which was now being called a

1 pressure sore.

2 Q. And so did you -- you knew at the time that you had
3 the meeting on November 17th of 2008, that that bunion was
4 now a pressure ulcer? You knew that at the time you
5 prepared your agenda, correct?

6 A. Yes, I did.

7 Q. And how did you learn that? Where did you get that
8 information?

9 A. I was talking to some of the -- excuse me --
10 physicians at work and talking about the bunion and how --
11 *Does a bunion bleed and what's that?* And they said, *You*
12 *know, that really sounds like a pressure sore to me.*

13 Q. So now let's go to the reply e-mail, page 12.

14 So this e-mail came back to you from Nancy, right?

15 A. Yes.

16 Q. Okay. And is this the first time that you had
17 communicated via e-mail with Peggy or Nancy?

18 A. Um, the first time -- yes, with Peggy and Nancy.

19 Q. Had you ever had any e-mail communication from them
20 anytime prior to that?

21 A. No. I hadn't had any communication with Nancy at
22 all actually.

23 Q. Okay. And had Peggy or Nancy ever e-mailed you or
24 Eric before you sent them the e-mail on November 18th?

25 A. No.

26 Q. Had you ever gotten a call at home from Peggy or
27 Nancy about any updates in mom's condition, or dad's?

28 A. No. Even when we'd leave messages, we wouldn't get

1 anything back.

2 MS. CLEMENT: Okay. So, Erik, go to page two.

3 Q. (By MS. CLEMENT) So is this -- November 19th at
4 4:02 p.m., is this the next e-mail that you got in this
5 chain with Nancy?

6 A. Yes.

7 Q. Okay. And tell us what was going on at this time.

8 A. Um, there was the talk on November 17th at the
9 meeting with Peggy and Nancy that hospice would be a way to
10 keep mom there and that would benefit her. So one of the
11 things they said they needed to do before they could get
12 hospice is they had to get something called a hospice
13 waiver. And so they were working on getting a hospice
14 waiver. And Peggy was going to check out the pressure sore
15 and make sure that they were still within their licensure
16 to keep mom with a pressure sore. And she wasn't sure, so
17 she was supposed to be checking that out as well.

18 Q. Okay. And did you rely on that? Did you and Eric
19 rely on that representation from Nancy?

20 A. It -- we did. Because our experience at The Palms
21 had been if they said they were going to do something or
22 what they said, it was truthful, it happened. And, yes,
23 unfortunately, we relied that.

24 Q. Okay. Let's go to the next one, your reply on page
25 three.

26 A. Yes.

27 Q. Okay. And who is Misty?

28 A. Misty, if I remember correctly, was a home health

1 coordinator of some kind from Kaiser. And mom was a Kaiser
2 patient, so they were involved.

3 Q. Okay. And you let Misty know that -- that getting
4 mom hospice eligible was something that you wanted to
5 pursue, and Eric was now okay with that?

6 A. Yes. She had called and asked if that indeed was
7 true, and I said yes.

8 Q. And you thanked her for running with this -- Nancy
9 running with it, in other words, taking -- taking charge
10 here?

11 A. Yes. I was -- we were all relying on Nancy and
12 Peggy to make this all work out. Because in the meeting on
13 the 17th they said that's what they would do.

14 Q. Okay. And then we go to page four.

15 And you got another e-mail from Nancy the next day,
16 at 3:33 p.m., the 20th, in response to yours.

17 And she let you know that Peggy was playing phone
18 tag and Kim -- was it your understanding Kim -- that was
19 the physical therapist?

20 A. Right.

21 Q. Okay.

22 MR. REID: It's leading, your Honor.

23 THE COURT: Sustained.

24 Q. (By MS. CLEMENT) All right. So any e-mails from --
25 that you got in this time period from Peggy?

26 A. No. We didn't receive any e-mails from Peggy in
27 follow-up until much later.

28 Q. Okay. So then let's go up and see your reply.

1 Okay. So you replied back 11 minutes later.

2 And did Misty let you know that Nancy had told Misty
3 that the State had said they were okay with keeping mom at
4 Emerald Hills with hospice care?

5 A. Yes. Yeah. Misty said they had a -- they were able
6 to keep mom there if hospice care came in, so...

7 Q. Okay. Now, between November 20th and November 30th,
8 did you hear anything at all from Peggy or Nancy?

9 A. No. There was no follow-up.

10 Q. Okay. And then if we'd go to page 11.

11 Did you write to Nancy and Peggy to follow up and
12 see what, if anything, was going on?

13 A. Yes. I called a few times but didn't hear anything,
14 so I wrote this e-mail in response to the lack of follow-up
15 to find out what was happening.

16 Q. Okay. And what was your hope at that point?

17 A. Well, because they had said that they were going to
18 pursue this and -- and part of mom getting hospice was
19 dependent upon could Emerald Hills keep mom and care for
20 her properly, care for this wound properly. And so when
21 they didn't respond and didn't follow up, I wrongly assumed
22 that things were going well and that mom's pressure sore
23 was getting better and they had had, you know, the training
24 from the physical therapist and mom was getting the care
25 she needed.

26 So I then just asked -- this was kind of like, *Am I*
27 *right? Is this really happening?*

28 Q. Okay. And what was your PS about?

1 A. Um, it was getting close to Christmas time and mom
2 loved the holidays. She was -- I think Eric called it
3 "holiday magic" when he used to talk about it. And so we
4 wanted to decorate her room a little bit.

5 Q. Okay. And can you go to page ten.

6 MS. CLEMENT: Start at the top, so we can see who
7 it's from, Erik. Thanks.

8 Q. (By MS. CLEMENT) Is this the first time you'd heard
9 from Peggy since the meeting?

10 A. Yes.

11 MS. CLEMENT: Okay. Okay. Erik, you can go to the
12 body now.

13 Q. (By MS. CLEMENT) And what was your understanding of
14 what Peggy was communicating to you in this e-mail?

15 A. Um, she was saying that mom had additional sores,
16 not just the one on her foot. And this was the very first
17 time we had ever heard anything like that. She was also
18 saying that her supervisor said that she could not -- Peggy
19 could not keep mom because her wound was more than what
20 they could take care of and they were going to have to seek
21 placement for a skilled nursing facility.

22 Q. And was it your -- did you have the understanding at
23 that time that it was Peggy and Nancy who were going to be
24 facilitating this move to a skilled nursing facility?

25 A. Yes.

26 Q. And did Peggy at all alert you to the pressure ulcer
27 on Mrs. -- on Joan's bottom?

28 A. No. We had no idea.

1 Q. Did she let you know how many different pressure
2 ulcers mom had?

3 A. No.

4 MS. CLEMENT: Okay. Let's go to page five, Erik.

5 Q. (By MS. CLEMENT) So Peggy wrote you the day after
6 you asked her about putting up the Christmas decorations
7 and if the pressure ulcer was any better. You replied --
8 she replied the next day at 2:25 p.m. And now you
9 replied -- excuse me, at 12:25 p.m. And you replied about
10 two hours later.

11 And are you -- are you writing to her from work?

12 A. Um, yes, I am.

13 Q. Okay. And at that point in time, did you ask her
14 what a care alert was?

15 A. Yes. I'd never heard of anything like that. This
16 was the first time we heard what a care alert was.

17 Q. Did anybody ever write back to you and tell you what
18 a care alert was?

19 A. No.

20 Q. Did they call you and tell you what a care alert
21 was?

22 A. No.

23 Q. Did you ever hear from Peggy again after this?

24 A. No.

25 MS. CLEMENT: Okay. And then, Erik, how about page
26 nine. Erik, I don't know that that's big enough.

27 Can everyone read that? You can? No. Maybe not.

28 Erik, why don't you take it in half. Is that going

1 to make it bigger? Okay.

2 Q. (By MS. CLEMENT) So what is this paragraph
3 conveying to Peggy and Nancy? And this is your -- that
4 evening, you sent them another e-mail, right?

5 A. Yes. I was -- I was pretty angry when I sent this.
6 Dad had called in a panic. And he'd been told by somebody,
7 a caregiver, that mom was refusing to eat or drink. And
8 that was a shock. I had never heard anything about that.
9 Um, and they also -- you know, we had asked them to speak
10 with us before they talked to dad because he would get so
11 upset. Sometimes he would get the facts confused. You
12 know, we would tell him immediately but we wanted to kind
13 of know so we could help him. And he'd asked us to help
14 with healthcare. So they didn't do that. And we heard
15 about this from dad and it was -- it was really -- it was
16 really frustrating.

17 Q. So in this next part you talked about -- talking dad
18 off the ceiling. What did you -- what was that about?

19 A. Yeah, I was being sarcastic. It was just dad was so
20 upset, that you had to spend 15 minutes on the phone just
21 trying to get, number one, the information out, and then to
22 calm him down and let him know that I'll call, I'll find
23 out what's happening. And it just didn't need to be that
24 way. He was -- this was hard enough on him. He didn't
25 need this on top of it. And they had promised a follow-up
26 with and we still hadn't heard.

27 Q. When you filled out all that paperwork at -- for
28 Emeritus after mom had moved in, was there a document in

1 there called a face sheet?

2 A. Yes.

3 Q. And did you list out for them who they should be
4 calling if there was any issues with mom?

5 A. Yes.

6 Q. And who was listed there?

7 A. Eric and then myself.

8 Q. And did you also ask Alicia to actually write it
9 down, to please call you guys, too?

10 A. Numerous times.

11 Q. Okay. So what about this at the bottom here? "I
12 think this whole idea of getting her moved fell through the
13 cracks at Kaiser because of the holiday."

14 What's that all about?

15 A. So this -- this e-mail, coupled with Peggy's e-mail
16 that there had been a care alert and mom now has additional
17 sores, it scared me. And I thought, *Okay. What's going on*
18 *here?* You know -- and, honestly, I wanted to say to them,
19 "Look" -- I wanted to make them not angry. I wanted to
20 have the best care for my mom. And so it seemed easier to
21 blame somebody else rather than them, so that they wouldn't
22 feel defensive and they would act and they would get mom
23 the best care. It was a hard time.

24 Q. Between the 20th of November and Peggy's e-mail of
25 December 1st, those 11 days, had anyone at Emeritus
26 suggested to you, or Eric, or to your knowledge, Myron,
27 that they couldn't take care of mom and that mom wasn't
28 going to be staying there?

1 A. No.

2 MS. CLEMENT: Okay. Erik, page 15. Start with...

3 Q. (By MS. CLEMENT) Okay. So this was the reply that
4 came back from Nancy Cordova the next day?

5 A. Yes.

6 MS. CLEMENT: And then the top of the page, Erik.

7 Q. (By MS. CLEMENT) And then you wrote back to her and
8 asked her how the finances were going to work with
9 Emerald Hills while mom was in the skilled nursing
10 facility?

11 A. Yes.

12 Q. And did you ever hear back again --

13 MS. CLEMENT: Thank you. You can do the lights for
14 us, Terrance.

15 Q. (By MS. CLEMENT) Did you ever hear back from Peggy?

16 A. No.

17 Q. Okay.

18 A. We never talked to her again, or e-mailed.

19 Q. Okay. Now, I want to move to Foothill Oaks. Okay?

20 So was it your understanding that after these
21 e-mails on the 2nd of December, that mom was now going to
22 move to a skilled nursing facility?

23 A. Yes.

24 Q. And was it your understanding that they were waiting
25 on a bed to be available?

26 A. Yes. That's what we were told.

27 Q. And can you take us to that day of December 4th,
28 when mom went to -- from Emerald Hills to Foothill Oaks.

1 A. Eric and I drove over -- I think it was late
2 morning. And we picked up dad. And I -- there was a like
3 a wheelchair van, and so I went in the wheelchair van with
4 mom. And, honestly, she was all dolled up. She looked
5 like she looked at The Palms but she had never looked at
6 Emerald Hills. And I remember thinking, *What's that about?*

7 And so we brought her to Emerald Hills -- excuse me,
8 to Foothill Oaks and brought, you know, some pajamas and
9 slippers and some other things to make her feel comfortable
10 there. And the executive director met us as we came into
11 Foothill Oaks.

12 Q. And after you got into Foothill Oaks with mom, was
13 there some paperwork and things that needed to be done?

14 A. Yes. They had quite a bit of paperwork. So we were
15 going through that. They were doing -- asking questions
16 about mom. And it took -- it took several hours.

17 Q. Did there come a point in time that day when you
18 were with mom and dad and Eric had left?

19 A. Yeah. The whole admission process took so long, and
20 the kids were getting out of school and Eric was their
21 ride. So he left to pick up the kids. And dad was also
22 getting tired, so Eric took dad back over there. So I
23 stayed. And I -- honestly, I was a little curious at this
24 time about what -- what are these additional pressure
25 sores, because I hadn't seen them. And the charge nurse
26 said she was going to do a full skin check on mom, so I
27 wanted to stay around for that.

28 Q. And can you tell the jurors what you saw.

1 A. Um, well, they started with the foot and -- her
2 right foot, where they had said there was a problem. And
3 it was not a bunion and it wasn't scabbed over. It was an
4 oozing, open sore. And then -- I was surprised. There was
5 another sore on that foot, back by the heel, and it was
6 black. Then they took off her other sock. And I had no
7 clue. There was a sore; it took up her whole heel. And it
8 was black and oozing red. And not to be rude, but it
9 smelled so bad. It was putrid. You could tell it was
10 decaying.

11 And then it got worse. Then they took mom's clothes
12 off and put her in one of the night gowns -- or the
13 hospital gowns. And then I saw what the care alert had
14 talked about. And it was this really big blister full of
15 liquid. And then they took off her diaper. And there were
16 two spots on her right hip that were red. It looked like
17 the skin was starting to come off. There was a similar
18 spot on the left side. Um, in between -- in between her
19 pelvis and the -- her legs, it looked -- there was skin
20 that was coming off. And the nurse said, *Yeah, this is --*

21 MR. REID: It's hearsay, your Honor.

22 THE COURT: Just tell us what you observed.

23 THE WITNESS: Okay. Observed skin coming off right
24 where I said.

25 And then, um, I thought we were about done. And
26 they rolled her over and then we found the one that was on
27 her sit bone and -- on the right side. It had gotten so
28 big. It was -- it was touching her vagina and it was all

1 the way around the side. Found a couple more spots above
2 that that were bright red.

3 Q. (By MS. CLEMENT) Sorry. Can you tell the jurors
4 what the one looked like on her sit bone.

5 A. Yeah. It was black. It was oozing. It was more
6 putrid than the one on her heel. I don't know how she sat.
7 It was horrible.

8 Q. What did you do after that, after seeing those
9 wounds?

10 A. I -- whew. I just sat with mom. I held her hand.
11 It was obvious when they were going through the skin check
12 and they would touch it or something, it hurt, and it hurt
13 bad. I would -- I just sat there. And they got her calmed
14 down and she was laying there.

15 So then I called Eric and the floodgates came
16 through and I couldn't talk for a while and sobbed. And
17 then I told him, *You know, mom's been abused and it's --*
18 *it's horrific.* And, um, that was -- that was the crux of
19 the conversation.

20 Q. After that day, we know that Joan lived for about
21 two more months after that.

22 Were you ever present during any treatments that
23 Joan received for her pressure ulcers?

24 A. Yes. Um, you know, I would stop by two to three
25 times a week. And you'd walk into her room and you could
26 smell it before you could see it. It was horrible. They'd
27 have the curtain pulled and I'd go around and say hi to the
28 wound care nurse. And mom was usually laying on her left

1 side because they were treating the wounds from that angle.
2 And I would hold her hand. And she would just grimace and
3 she would moan. And we asked finally, you know, can you
4 please give her meds before -- you know, some kind of pain
5 killer. Because it was, obviously, really painful. And,
6 yeah, that was awful, watching them do that.

7 Q. Now, we've seen some photographs that you took.
8 Were you the person who took photos of those wounds?

9 A. I did.

10 Q. And can you tell the jurors why you did that.

11 A. After what I saw, I called a couple of folks over
12 the weekend that I worked with, a couple of the doctors,
13 and just said, *You know, what -- what are we looking at*
14 *here?* And they said, *You know, you really need to take*
15 *some pictures of that, document the abuse.* So I did ask
16 Foothill Oaks had they taken pictures. And I was there
17 when they did the skin exam and the nurse was documenting.
18 But they said, no, they hadn't taken pictures. So I
19 brought Eric's camera in the Monday after mom was admitted
20 and took the pictures then.

21 Q. After that, taking those pictures, were you involved
22 in any way in trying to get Joan's records from Emeritus?

23 A. Yes.

24 Q. And how long do you remember it taking from the time
25 that the record request was first made to Emeritus before
26 mom's records were released?

27 A. It took six weeks.

28 Q. Did you report what you saw on mom to any state

1 agency, federal agency, local agency, any government agency
2 at all?

3 A. No.

4 Q. And why didn't you do that?

5 A. You know, I, through work, had worked with state and
6 local governments. I knew -- I knew they were underfunded,
7 they were underpaid, overworked. Um, just having watched
8 things with the Medical Board, I knew that. And I felt so
9 bad. You know, I'd been in healthcare at that time for 20
10 years, and Emeritus was able to pull the wool over my eyes,
11 so some poor state worker who only has time to do a cursory
12 look is not -- is not going to figure this out. This isn't
13 going anywhere.

14 So we -- we determined a couple weeks later we
15 needed to go to the next step, and that's kind of why we're
16 here.

17 Q. Kathleen, can you share with the jurors what it's
18 been like for Eric --

19 MR. REID: Well --

20 Q. (By MS. CLEMENT) -- since your mom's passed?

21 MR. REID: As phrased, I think that may call for
22 hearsay, your Honor. It's overbroad.

23 THE COURT: She can testify as to her personal
24 observations.

25 THE WITNESS: Um, I see Eric wake up at night from
26 nightmares. We both live with just a horrific guilt that,
27 you know, *Why didn't we see the signs earlier? Why didn't*
28 *we take mom out of there? Why didn't -- why, why? And he*

1 deals with that through nightmares.

2 He's never really been able to heal, move on. I
3 mean, you know, sometimes parents pass away and it's
4 horrible, but it's part of the natural cycle. You kind
5 of -- and he --

6 MR. REID: Your Honor, I don't think this is
7 responsive and it's a narrative.

8 THE COURT: I think she's answering.

9 THE WITNESS: So he's really not had any closure
10 over it. He really can't talk about mom without starting
11 to get very quiet or tear up. And he has had to start
12 taking sleeping medication since that all happened, because
13 he can't sleep without it.

14 MS. CLEMENT: Thank you, Kathleen.

15 THE COURT: Mr. Reid.

16 MR. REID: Yes. Thank you, your Honor.

17 Good afternoon, ladies and gentlemen.

18 JURORS IN UNISON: Good afternoon.

19 CROSS-EXAMINATION

20 BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the
21 Defendant:

22 Q. Mrs. Boice. I know we've met a couple times. It's
23 nice to see you again. And I know this was a difficult
24 experience and I know it's hard to talk about. So, please,
25 bear with me as I explore a few things. Okay?

26 I want to step back just a little bit and talk a
27 little bit about your experiences with your mother-in-law
28 and your family in the years leading up to Emerald Hills.

1 Okay?

2 A. Yes.

3 Q. Previously, we've looked at an exhibit. I want to
4 put it up really quick and ask a couple of questions about
5 it. It's Exhibit 5003, and it's page 88, which is a record
6 from Kaiser.

7 MR. REID: Is it okay if we put that up, your Honor?

8 THE COURT: Yes.

9 MR. REID: And if you could just bring up the bottom
10 portion there (indicating).

11 Q. (By MR. REID) We'd heard that this is a -- the
12 first -- a note from the first visit that -- where
13 Dr. Awan -- it was an initial primary encounter with
14 Dr. Awan, and your father-in-law was there, and you were
15 there and your husband was there.

16 Do you have a memory of this meeting with doctor --
17 Dr. Awan?

18 A. Yes.

19 Q. And we won't go through all of it. We talked about
20 it yesterday. But there was -- there was apparently a
21 discussion, a concern about your mother-in-law receiving
22 morphine every day.

23 Do you have a memory of that?

24 A. Yes, I do.

25 Q. And what's your memory of that conversation?

26 A. Um, mom -- well, dad was concerned about morphine.
27 He heard "morphine" and he thought "heroin." So he was
28 concerned about addictive qualities. And mom had been

1 taking it because she had a bad back. So dad really wanted
2 to bring that up with the doctor. And I had tried to
3 explain it to him, but it was better if the doctor
4 explained why she was taking it.

5 MR. REID: Okay. Could you bring up the second
6 page, Miss Ford.

7 Q. (By MR. REID) And what did you try to explain to
8 your dad about the morphine?

9 A. That morphine was not heroin.

10 MR. REID: Okay. Let's -- if you could bring up the
11 second part there (indicating).

12 Q. (By MR. REID) Dr. Awan noted that -- that the
13 husband was concerned about addictive -- addiction
14 potential but reassured that your mother-in-law's comfort
15 was now primary.

16 Do you remember Dr. Awan expressing that to you and
17 Eric and your father-in-law?

18 MS. CLEMENT: Objection; misstates the document.
19 There's no word "now" in the document.

20 THE COURT: Please rephrase.

21 Q. (By MR. REID) Directing your attention to that --
22 that entry there, but where Dr. Awan is talking about
23 "Patient's comfort is primary."

24 Do you have a memory of what Dr. Awan said about
25 that?

26 A. Not specifically.

27 Q. Okay. Skipping all the way down to the bottom of
28 that note --

1 MR. REID: And we can keep that up. I'm sorry. No,
2 no. The bottom of the note. Sorry.

3 MS. FORD: Sorry.

4 MR. REID: My fault.

5 Q. (By MR. REID) Dr. Awan indicated that you'd all had
6 a long discussion about the course of dementia and the need
7 for advanced directives.

8 What do you recall about that -- that discussion in
9 March of 2007? What do you remember Dr. Awan saying about
10 that, the course of dementia and a long discussion?

11 MS. CLEMENT: Hearsay.

12 THE COURT: Is there an exception?

13 MR. REID: Well, she was at a meeting that plaintiff
14 Eric Boice was at, so it's relevant to her state of mind,
15 his state of mind and what he heard.

16 THE COURT: Whose state of mind?

17 MR. REID: Both the witness and -- and her husband
18 Eric Boice who was at the meeting as well.

19 THE COURT: Okay. We need to break this down.

20 With respect to this witness' state of mind, her
21 state of mind is not an issue in this case.

22 MR. REID: Okay.

23 THE COURT: I haven't heard any questions about any
24 subsequent conduct, so I would sustain the objection on
25 that basis.

26 You're talking now about Eric Boice?

27 MR. REID: Correct.

28 THE COURT: Who was reportedly at this meeting as

1 well?

2 MR. REID: Correct.

3 THE COURT: And you are asking -- what is the
4 question then as to him?

5 Q. (By MR. REID) The question is: What did you hear
6 Dr. Awan say to the group, that included your husband Eric,
7 about the course of dementia?

8 MS. CLEMENT: It's still hearsay.

9 THE COURT: As phrased, sustained.

10 Q. (By MR. REID) Well, let me just ask you this: Do
11 you remember the conversation?

12 A. Not specifically.

13 Q. Okay. Then we'll move on.

14 As I recall reading your deposition, I believe that
15 your mother-in-law was diagnosed with the Alzheimer's
16 disease about a year before that.

17 Is that correct?

18 A. I'm sorry. A year before when?

19 Q. This meeting of March of 2007.

20 A. Um, I believe she was diagnosed in late 2006.

21 Q. Okay. Thank you.

22 And once that diagnosis was made, did you do some
23 research about Alzheimer's disease?

24 A. Yes.

25 Q. And were you -- were you -- did you have familiarity
26 with Alzheimer's disease before the diagnosis was made?

27 A. No.

28 Q. Did you also meet with a social worker at Kaiser who

1 gave you information about Alzheimer's disease?

2 A. Yes, we did.

3 Q. Okay. When you say "we," who else met with the
4 social worker?

5 A. I think dad met with her as well, but I can't -- I
6 can't quite recall.

7 Q. And what was the purpose of the meeting?

8 A. She was telling us about memory care support groups
9 that Kaiser offered. There wasn't a lot to talk about
10 because mom didn't need a lot of services at that point.
11 Um, so it was basically, you know, *When you think it's*
12 *time, here's the memory care support groups. And you can*
13 *always reach out to the* -- it was a national Alzheimer's
14 group. I don't remember the name of it.

15 Q. Okay. Did you -- as you were researching
16 Alzheimer's disease, did you come to learn more about
17 the -- the course of the disease?

18 MS. CLEMENT: Objection; vague.

19 THE COURT: She can answer, if she can.

20 THE WITNESS: Um, could you clarify what "course of
21 the disease" means.

22 Q. (By MR. REID) In other words, did you come to learn
23 what you could expect to encounter with your mother-in-law
24 as the disease -- as the years progressed?

25 A. Um, not really. Because it seemed like she was so
26 early in it that anybody -- it can go different ways. And
27 it was saying that some people can live up to 15 years
28 with -- with Alzheimer's.

1 Q. Okay. So -- so when you did the research you found
2 that -- that there was a age -- or a range of years that
3 someone might live with Alzheimer's disease?

4 A. It said something about that. But it was basically
5 this is not the end, you know.

6 Q. Okay.

7 A. There's a whole lot of living to do.

8 Q. Did you ever have a -- have a conversation with Eric
9 about the age -- the life expectancy of someone with
10 Alzheimer's disease running from four to ten years?

11 A. Not that I recall.

12 Q. Did you ever come to learn that Alzheimer's disease
13 was a progressive disease and that the condition would
14 continue?

15 A. I wouldn't put it exactly like that.

16 Q. What did you learn about Alzheimer's disease?

17 A. Um, more that it was progressive, but it was
18 progressive at different -- different ways. Some people
19 progressed differently than others.

20 Q. Did you ever -- as you were doing this research and
21 having these conversations, did you ever discuss with your
22 husband any information as to Alzheimer's disease being a
23 major cause of death in the United States?

24 MS. CLEMENT: Hearsay, your Honor.

25 THE COURT: Sustained.

26 Q. (By MR. REID) Did your husband ever communicate to
27 you any knowledge about Alzheimer's disease as being the
28 sixth leading cause of death in the United States?

1 MS. CLEMENT: Hearsay, your Honor. And it's
2 inappropriate.

3 THE COURT: Sustained. Strike the question and the
4 answer.

5 Mr. Reid, be careful.

6 MR. REID: Yes, your Honor.

7 Q. (By MR. REID) Did you have any understanding about
8 any stages of the progress of Alzheimer's disease?

9 A. No.

10 Q. Were you ever a part of a discussion with your
11 husband concerning late stage Alzheimer's disease?

12 A. No.

13 Q. Was there ever a time that you became aware that any
14 of your -- your mother's physicians had diagnosed her as
15 being in late stage Alzheimer's disease?

16 A. No. Kind of the opposite.

17 Q. Did you ever hear or learn that her physician had
18 determined her to have advanced Alzheimer's disease?

19 A. No.

20 Q. Did you ever have any understanding as to whether
21 Alzheimer's disease might affect one's ability to
22 communicate?

23 A. Um, yes.

24 Q. And what was your understanding in that regard?

25 A. Just that one of the things that could happen is
26 that communication -- the ability to communicate could
27 diminish.

28 Q. And you had observed that in your mother-in-law over

1 those few years; is that true?

2 A. Over which -- which years?

3 Q. From when it was diagnosed in 2006 through the time
4 she was at Emerald Hills?

5 A. Yes.

6 Q. Did you ever come to learn that Alzheimer's disease
7 can affect one's ability to walk?

8 A. No.

9 Q. Did you ever come to learn that Alzheimer's disease
10 could affect one's ability to perform self-care?

11 A. Well -- I'm sorry. When you say "come to learn,"
12 what time frame are you talking about?

13 Q. From the time that -- that the diagnosis of
14 Alzheimer's disease was made moving forward.

15 Was there ever a time that you came to get any
16 information about whether the disease might affect the
17 patient's ability to perform self-care?

18 A. Yes.

19 Q. And what did you learn in that regard?

20 A. Um, that some people, they kind of forget the steps
21 of brushing your teeth. So someone would have to say,
22 "Okay. Now, pick up the tooth brush," and then they could
23 brush their teeth.

24 Q. And did you have an understanding as to whether, as
25 the Alzheimer's disease progressed, they may lose their
26 ability to brush their teeth at all?

27 A. Hmm, I don't think at that point I had that, you
28 know, much of an understanding of that.

1 MS. CLEMENT: Your Honor, may we be heard at
2 sidebar?

3 THE COURT: Come on up.

4 (Whereupon an unreported bench conference was then
5 had in open court between the Court and counsel.)

6 Q. (By MR. REID) Mrs. Boice, during the time that your
7 mother-in-law was -- had been diagnosed with the
8 Alzheimer's disease and while she -- that course when she
9 lived in Emerald Hills, did you have any understanding that
10 the disease might affect one's ability to swallow?

11 A. No, not at that time.

12 Q. Okay. Was there -- "Not at that time."

13 Did you come to learn that afterward?

14 A. Hmm. I think -- yes. Yes. After she moved to
15 Foothill Oaks.

16 Q. Okay. And then in terms of your observations of
17 your mother-in-law's abilities as time progressed -- and
18 I'm going to focus now on that time frame before they moved
19 into The Palms. Okay?

20 A. Okay.

21 Q. At that point in time, did you come to learn that
22 your father-in-law was -- was assisting your mother-in-law
23 with her showering?

24 A. Um, I wouldn't quite put it that way.

25 Q. Okay. What -- tell -- then help me understand.

26 What is it that you understood -- you understood
27 that your mother-in-law was needing help with before they
28 moved into The Palms?

1 A. Oh, with regard to showering, I think the concern
2 was just that -- would she remember the hot from the cold.
3 She could get into the shower. She could do all of that.
4 So would she remember that. And would she remember to wash
5 all body parts. That was a concern.

6 Q. Okay. And that was -- that was hard on your
7 father-in-law?

8 A. Yes. Because she wouldn't let him help her.

9 Q. And then after they moved into The Palms -- so at
10 first, they were living in an apartment together, right?

11 A. Yes.

12 Q. And then a couple months later she moved into the
13 memory care area?

14 A. Yes.

15 Q. And did you come to learn that when -- when your --
16 when they were living in the apartment together that your
17 dad was -- was feeding your mother-in-law and helping her
18 dress?

19 A. I knew that -- or heard after they moved in that he
20 was feeding her.

21 Q. And did you also come to learn that he was helping
22 her dress?

23 A. I had not heard that.

24 Q. Do you recall testifying that before your
25 mother-in-law moved into the memory care section of
26 The Palms, that in the evenings it was tough for your
27 father-in-law to get her dressed and those kinds of things?

28 A. Hmm. If I said that, then -- and what I recall is

1 more that mom would get up during the middle of the night
2 and she would -- she would go in her pants. And dad was
3 embarrassed to call help. So he would try to help her
4 change at that point. And that was very difficult on him.

5 Q. Okay. And so it sounds like, from everybody's
6 standpoint, moving into memory care at The Palms was a good
7 thing for -- for your mother-in-law.

8 A. That's what they recommended.

9 Q. And it seemed to work out pretty well?

10 A. Yes.

11 Q. Now, are you -- did your mother-in-law have any --
12 experience any falls while she was at The Palms?

13 A. Yes, she did.

14 Q. Okay. And recall when we took your deposition, you
15 didn't have a memory of knowing of any falls, right?

16 A. Correct.

17 Q. So you've come to learn that since the time of your
18 deposition?

19 A. Um, yes.

20 Q. Okay. And the deposition was October 7th of last
21 year?

22 A. Um, yes.

23 Q. Okay. Now, I don't want to -- I don't want to -- I
24 could show you the deposition. It was -- it was --
25 you remember it was October of last year?

26 A. Sure.

27 Q. Okay. So as of the time of your deposition, you
28 hadn't remembered receiving any calls from The Palms about

1 your mother-in-law suffering falls at The Palms, correct?

2 A. I think at the time of the deposition I was confused
3 trying to remember all the different things. So if it says
4 that I said no, then, yeah, I didn't remember it at that
5 time.

6 Q. And since the time of the deposition, other than any
7 communications with your attorney -- because you're
8 represented by Miss Clement, right?

9 A. Correct.

10 Q. Okay. Any other -- other than communications with
11 Miss Clement, what have you come to learn about falls that
12 your mother had -- your mother-in-law had at The Palms?

13 A. Um, well, for example, Eric afterwards, you know,
14 sometime between now and then, he said, *Don't you remember*
15 *the time that mom fell? And remember, she broke her*
16 *finger? And I'm like, Oh, yeah. I forgot about that one.*
17 So not that there were so many things that -- that I
18 couldn't remember, it was just a long time ago.

19 Q. Sure.

20 A. So he reminded me that that had happened.

21 Q. So -- so -- so he reminded you of a fall where she
22 broke her finger, right?

23 A. Yes.

24 Q. And is that the only fall that you remember ever
25 knowing about that your mom had at The Palms -- or your
26 mother-in-law had at The Palms?

27 A. You know, I don't really recall. We'd have
28 different conversations, and perhaps there were more falls,

1 but I -- I just specifically remember him saying, *Kath*,
2 *don't you remember this?* And I said, *Yes*.

3 Q. Okay. But at any rate, you remember that The Palms
4 was very good about notifying you of any -- everything that
5 was going on with your mother-in-law?

6 A. Yeah. Anything that happened at The Palms, we'd
7 hear about it within an hour.

8 Q. Okay. At the time of -- of your mother-in-law --
9 the day that your mother-in-law went to Emerald Hills, you
10 were with her. You told us about that.

11 A. Yes.

12 Q. And I know that -- that you waited for quite some
13 time in the -- in the sitting area there at Emerald Hills,
14 waiting for Miss Stevenson.

15 Correct?

16 A. We waited for some time just trying to -- at that
17 time, we didn't know it was Peggy. We just knew we had to
18 have our evaluation done for mom.

19 Q. Okay. So who communicated to you that your -- that
20 your mother-in-law needed to have an evaluation before she
21 could move in?

22 A. Um, I think Eric discussed with someone that, you
23 know, we could move her furniture in. We can move
24 everything in, but they needed to do some kind of
25 evaluation on her, similar to what they'd done at
26 The Palms.

27 Q. Okay. And then when there's -- as you walk in the
28 door at Emerald Hills there's kind of a living room on the

1 right-hand side with big couches and a fireplace?

2 A. Yes.

3 Q. Is that where you waited? Is that where you were
4 sitting and waiting?

5 A. Yes. That's where we waited.

6 Q. And then -- and then did you and your -- you and
7 Joan move to the memory care area for the evaluation?

8 A. We did.

9 Q. And where -- where did the evaluation take place?

10 A. It took place in their activity room, inside the
11 Memory Care Unit.

12 Q. And how did -- how did your mother-in-law get from
13 the living room to the activity room in memory care?

14 A. She walked with her walker.

15 Q. I think you said that she moved pretty good, or
16 something like that, with her walker?

17 A. She did.

18 Q. Then that's where you met Peggy Stevenson and the
19 evaluation took place, correct?

20 A. Yes.

21 Q. In the activity area of the memory care?

22 A. Yes.

23 Q. Was it just the three of you in the activity area at
24 that time?

25 A. Yes.

26 Q. What was your -- what was your impression of Peggy?

27 A. She was very rushed and she wasn't very thorough.

28 Q. Now, you -- we went -- you went through the

1 pre-placement appraisal document with Miss Clement.

2 Do you recall that, the two-page document?

3 A. That she put up there?

4 Q. Right.

5 A. Yes.

6 Q. And I think you testified that -- that you went over
7 the information on the document with Miss -- with Peggy
8 Stevenson at the time of the evaluation.

9 A. Not -- not the document that mom put up there, no.
10 I mean, that -- sorry. Not the document that Lesley put up
11 there. No, we did not review that.

12 Q. Okay. Did you talk about the -- I thought you said
13 that you had reviewed that information or gone over that
14 information with Miss Stevenson.

15 A. I believe I said that there was -- some of the
16 information that was on the pre-placement appraisal was in
17 the checklist that Peggy was filling out, but we didn't sit
18 and look at the pre-placement appraisal and go through it
19 specifically.

20 Q. All right. Maybe -- if we could put that up real
21 quickly. And I just want to ask a couple questions. It's
22 Exhibit 3, page 73 and 74.

23 So as we look at the first page of the appraisal, do
24 you -- do you recall which portions you did review with --
25 I know you didn't go over the form. But which sections or
26 what information did you share with Miss Stevenson?

27 A. So Peggy never talked about this form. We -- I just
28 handed it in to one of the folks at the front desk who had

1 given it to me to fill out while we were waiting.

2 And I -- I need to put my glasses on because I can't
3 read that.

4 Q. Okay. Why don't we -- I'll blow it up for you.

5 A. Okay.

6 Q. Let's have Miss Ford maybe just -- there we go.

7 A. Okay.

8 Q. Is that better?

9 A. Yes.

10 Q. Okay. So was there any of the portions reflected
11 here that you remember discussing with Ms. Stevenson?

12 A. Hmm. Um, you know, she asked questions about mom's
13 health history. So I -- I'm sure I talked about those
14 things with her.

15 Q. Okay. And did you discuss with Ms. Stevenson your
16 mom's unsteady gait and requiring a walker?

17 A. I don't remember if she asked that or not. I know
18 she -- yeah, I did tell her she needed a walker. But I
19 don't know about the unsteady gait in that piece. It was
20 really fast. It was five minutes.

21 Q. Okay. You said ten minutes in your deposition.

22 A. Okay. Ten minutes. Five, ten minutes.

23 Q. Maybe -- I'm not going to -- I know it was a
24 quick -- it was a quick experience.

25 Help me understand, because I've heard different
26 things about your mother's -- your mother-in-law's ability
27 to use the walker. And so, for example, you know, you
28 described when you went from the living room to the

1 activity room, she got along pretty good and moved pretty
2 quick, if I recall your testimony.

3 Is that correct?

4 MS. CLEMENT: Objection. It's vague, your Honor.
5 What testimony?

6 MR. REID: I'll rephrase it, your Honor.

7 THE COURT: Thank you.

8 Q. (By MR. REID) Describe for us your recollection of
9 your mother-in-law's gait going from the living room to the
10 activity area the day she moved into Emerald Hills.

11 MS. CLEMENT: Asked and answered.

12 THE COURT: She can answer.

13 THE WITNESS: Okay. When mom walked from the living
14 room to the activities room, she walked with her walker.

15 Q. (By MR. REID) Okay. And did you have to assist her
16 in any way when she walked back to the Memory Care Unit?

17 A. While she was walking?

18 Q. Correct.

19 A. No.

20 Q. And was she pretty speedy in her walking to the
21 activity area?

22 A. Describe "speedy."

23 Q. Well, if you testified she was speedy, what would
24 you have meant by that?

25 A. That she was maybe -- well, I don't know. Did I
26 testify that she was speedy?

27 Q. Well, let me show you.

28 MR. REID: May I refresh her recollection, your

1 Honor?

2 THE COURT: Page and line, please.

3 MR. REID: It's page 47, line 10 through 12.

4 THE COURT: Okay.

5 MS. CLEMENT: May we have the lights, your Honor?

6 Sorry. I can't see.

7 THE COURT: You can show the witness.

8 And if you could just, please, read it to yourself.

9 THE WITNESS: Okay.

10 (Pause.)

11 Q. (By MR. REID) Okay. Does that refresh your memory
12 of using that word?

13 A. Yes. Thank you.

14 Q. Okay. Can you tell us -- do you know what you meant
15 by that?

16 A. Um, that mom could walk, had the ability to walk
17 from the -- you know, she walked into the place, then she
18 walked from the living room to the activities room.

19 Q. Okay. So when you write "very unsteady gait," help
20 me understand what that means in terms of what you just
21 described. So when she's walking from the -- the living
22 room to the activity room, was she walking with a very
23 unsteady gait?

24 A. Not -- not at that time. But sometimes she could.

25 Q. Okay. All right. So her -- her gait would -- it
26 would -- it would -- sometimes it would be really good and
27 other times she'd be unsteady at that point in time?

28 A. Um, the most unsteady part was really when she was

1 trying to stand up.

2 Q. Okay. Gotcha. Thank you.

3 And then when you wrote "difficulty communicating
4 verbally," can you describe for us what that meant at that
5 time in your mother-in-law's circumstance, from your
6 perspective.

7 A. Yes. She could answer "yes" or "no". She could
8 mimic. So if I said, "How are you this morning?" She
9 would say, "This morning."

10 Q. Okay. Was she -- was she -- so it doesn't sound
11 like she was communicating in sentences at that point in
12 time.

13 A. Every once in a while, but it was -- they were very
14 short sentences at that point in time.

15 Q. Okay. I'm sorry.

16 THE COURT ATTENDANT: It's okay. It's okay.

17 Q. (By MR. REID) Let's just look at the rest of the
18 form.

19 So do you remember having any communication with
20 Ms. -- Ms. Stevenson about your observations about her
21 ability to -- your mother-in-law's ability to communicate
22 verbally?

23 A. Um, she assessed that for herself.

24 Q. Okay. Do you remember what she did or how she made
25 that assessment that day?

26 A. Yes.

27 Q. Tell us what you observed Ms. Stevenson doing.

28 A. She looked at mom and said, "Do you know your name?"

1 And mom said, "Yes." And then she says, "Well, tell me
2 your name." And mom looked over at me. And then Peggy
3 said, "Yeah, I thought so." Meaning she thought, I guess,
4 that mom couldn't say her name. And I don't know why she
5 said it that way.

6 Q. Okay. Do you recall any other -- Peggy Stevenson
7 asking any other questions at that time and during that
8 meeting?

9 A. Regarding her communication?

10 Q. Asking your mother-in-law any questions about
11 anything?

12 A. She pretty much directed them to both mom and I.

13 Q. Do you remember your mother-in-law responding in any
14 way to Miss Stevenson, other than what you've talked about?

15 A. Um, not really. She would -- I mean, she might say
16 "no" or nod her head or something, but it was really me
17 that was answering the questions.

18 Q. Do you remember in that meeting your mother-in-law
19 responding appropriately to any of the questions that
20 Miss Stevenson was asking?

21 And let me clarify. You just said that sometimes
22 she would say "no" or she would nod her head.

23 Do you remember her doing that when you thought it
24 was an appropriate response to the question that
25 Miss Stevenson asked?

26 A. Wow. Um, I don't. I don't recall what her response
27 was.

28 Q. Okay. You wrote, "Quietly observes."

1 What did that mean?

2 A. She was -- she was an introvert, and she would watch
3 what people were doing, even before she had Alzheimer's.

4 Q. Okay. Is that -- from your perspective, is that
5 what she enjoyed doing, just kind of watching people and
6 seeing what was going on around her?

7 A. I don't know if enjoyed -- that's just what she did.
8 It was her personality.

9 Q. Okay. And then "severe confusion."
10 What did you mean by that?

11 A. Hmm. Um, probably more the forgetfulness or -- I'm
12 trying to think of an example of confusion. It was more --
13 I was thinking about the forgetfulness and that sometimes
14 she would not be able to tell maybe where she was, that
15 type of a thing.

16 Q. Okay. And when you use the word "severe," do you
17 remember what you -- why you wrote -- used that word?

18 A. I wanted them to understand that they were going to
19 need to -- to be very kind, to wrap their arms around her,
20 explain to her what is happening. And sometimes they might
21 need to explain it twice. I knew going to a new place was
22 going to be scary for her, and they needed to help make her
23 feel safe. And part of that was explaining things because
24 she doesn't always understand.

25 Q. Okay. Do you recall having any discussions with
26 Miss Stevenson about the likes and dislikes that you listed
27 on the form?

28 A. She didn't ask anything like that.

1 MR. REID: Okay. Let's look at the rest there.

2 Q. (By MR. REID) Okay. And then you -- I think
3 there's a series of boxes that we went through, and you
4 answered questions.

5 Let's go to the next page here. 74.

6 All right. And I think you already told us about
7 these -- the -- let's take the services. Let's go down to
8 the services where there was some writing, "Services
9 Needed."

10 Do you recall discussing any of the services needed
11 that you -- that you wrote here, discussing that with
12 Miss Stevenson?

13 A. Hmm. I -- I remember her asking about how mom -- if
14 she needed help when she got up out of a chair. But I
15 don't specifically remember that we went over any of those
16 kinds of things.

17 Q. Okay. Thank you.

18 THE COURT: Mr. Reid?

19 MR. REID: Yes.

20 THE COURT: I think we are at an end for today.

21 Ladies and gentlemen, please leave your notebooks on
22 the chairs, remember the admonitions. 9:00 o'clock
23 tomorrow morning. Thank you.

24 And, Mrs. Boice, we'll need you back at 9:00 o'clock
25 tomorrow.

26 THE WITNESS: Okay.

27 **(The following proceedings were then had in open**
28 **court, outside the presence of the jury.)**

1 get clarity on that. If it's getting to be a hassle,
2 meaning that they're not going to -- they can't commit to
3 you and you don't know if it's going to impact your
4 insurance, we will -- where is this dentist's office?

5 JUROR NUMBER ONE: It's actually Scripps. Number
6 Two Scripps.

7 THE COURT: Okay. All right. We'll see what we can
8 do. If it doesn't -- if you have to make it, maybe we'll
9 see if we can get going earlier that day in the morning,
10 start the trial earlier and then just get done earlier that
11 day. Okay?

12 I'll work with you on it. If you can get me a
13 little more information.

14 JUROR NUMBER ONE: Okay. I'll try to do that today.

15 THE COURT: All right. Thank you.

16 Are we ready otherwise everybody?

17 Can we bring our witness in first, and then bring
18 the jury in.

19 THE COURT ATTENDANT: Yes.

20 (Pause.)

21 THE CLERK: Is it the same lady from yesterday?

22 THE COURT: Sorry?

23 THE CLERK: Is it the same lady from yesterday?

24 THE COURT: Yes.

25 (Pause.)

26 **(The following proceedings were then had in open**
27 **court, in the presence of the jury.)**

28 THE COURT: Mrs. Boice, please come on up.

1 THE WITNESS: Your Honor? Do I get sworn in again?

2 THE COURT: No.

3 THE WITNESS: Okay. I just want to be sure.

4 THE COURT ATTENDANT: Come to order. Department 45
5 is once again in session. The Honorable Judge Judy Hersher
6 presiding.

7 You may be seated.

8 THE COURT: All right. Good morning, everyone.

9 JURORS IN UNISON: Good morning.

10 THE COURT: Mr. Reid.

11 MR. REID: Yes. Thank you, your Honor.

12 Good morning, ladies and gentlemen.

13 JURORS IN UNISON: Good morning.

14 TESTIMONY OF

15 KATHLEEN BOICE, a witness called by the Plaintiffs:

16 CROSS-EXAMINATION (resumed)

17 BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the
18 Defendant:

19 Q. Mrs. Boice, good morning.

20 A. Good morning.

21 Q. This morning I just wanted to have you identify some
22 documents for us first.

23 MR. REID: So, Mr. Taylor, if we could get the
24 screen up.

25 Q. (By MR. REID) One of the documents that -- that you
26 filled out for your mother-in-law -- I think there was a
27 couple of what's called "face sheets." And I just wanted
28 to take a look at those and have you identify the writing

1 for us.

2 And so if we could grab Exhibit 2. I'll help you
3 there real quick.

4 MR. REID: If I can approach, your Honor?

5 THE COURT: Yes.

6 Q. (By MR. REID) It's in the white binder here.

7 (Pause.)

8 Q. (By MR. REID) Okay. Let me check my notes here.

9 Could you turn to page MC27 and see if -- see if
10 that matches my page, because I didn't see my notes lining
11 up with yours.

12 Is that -- do you recognize the face sheet on MC27
13 that you filled out?

14 A. Yes.

15 MR. REID: Okay. Let's put that up just very
16 quickly.

17 Q. (By MR. REID) So this is your writing, correct?

18 A. Yes.

19 Q. All right. And were these -- is this an example of
20 the kind of forms that you filled out for your
21 mother-in-law over the -- over the years leading up to
22 Emerald Hills?

23 A. I'm -- over the years?

24 Q. Yeah.

25 A. What does that mean?

26 Q. I think you also did one for The Palms.

27 A. Yes.

28 Q. Okay. And that's your signature at the bottom of

1 the form and the date -- your date?

2 A. Yes.

3 Q. And then if you could turn to page 62 in that
4 exhibit.

5 Do you recognize that document?

6 A. Yes, I do.

7 Q. Okay. And what is this document?

8 A. Um, it's similar to one that -- when we were at
9 The Palms, that they filled out talking with us. But they
10 had given us this one -- I believe it was after mom moved
11 in -- and asked us to talk about her likes and dislikes.
12 Q. Okay. So a Biosketch family interview that you
13 filled out in connection with your mom's moving into
14 Emerald Hills -- I mean, your mother-in-law's moving into
15 Emerald Hills?

16 A. Yes, after she had moved in.

17 Q. Okay. And is this all your writing on this
18 document?

19 A. Yes.

20 Q. Okay. So you wrote your mother-in-law's name and
21 the date there?

22 A. Yes.

23 Q. But you think you -- I remembered you testifying
24 yesterday that you filled out some information while you
25 were waiting for Ms. Stevenson. And I was wondering if
26 maybe this is what you filled out while you were waiting.

27 A. No.

28 Q. Okay. So your memory is, even though it's dated

1 9/12/08, that you filled it out sometime after 9/12/08?

2 A. That evening or something. I didn't fill this out
3 when we were sitting there waiting.

4 Q. Okay. If you could turn to the second page of this
5 document, which is MC63. And I just -- I wanted to direct
6 your attention to the first section there and ask you just
7 a quick question about that.

8 In this section -- and if you want to take a second
9 to look at it, that's fine. But it looks to me like you're
10 describing the kinds of things that you observed your
11 mother-in-law doing when she lived at The Palms in terms of
12 her routines.

13 A. Yes.

14 Q. And so you said: At The Palms she would wake up,
15 dress for breakfast and then eat in the dining room.

16 Correct?

17 A. Yes.

18 Q. And then: She'd participate in various activities
19 during the morning. Generally, she would sit in the main
20 activity room and enjoyed observing.

21 A. Yes.

22 Q. Okay. And that's kind of like what you had
23 described yesterday for us, I think, right?

24 A. That she had a personality that was -- she liked to
25 observe.

26 Q. Okay. Okay. Thank you.

27 And then if you could turn to the fourth page of
28 this document. It's MC65.

1 A. Okay.

2 Q. In the -- she used to enjoy Jazzercise apparently.

3 A. Yes.

4 Q. Okay. And then on the next section down, it says:
5 Describe in detail grooming and dressing and bathing
6 and showering routines.

7 And you said: She will now follow whatever is
8 needed; although, she rejects the idea of a shower if you
9 tell her it is coming.

10 Where did you get that information?

11 A. That was from the caregivers at The Palms.

12 Q. Okay. So if -- were you communicating that --
13 that -- instead of saying, "Okay, Joan, it's time for a
14 shower," that they would just kind of take her over there
15 and do it and not -- not give her a warning because then
16 she'll reject? Is that what you were communicating?

17 A. Sometimes she would take a shower -- or they would
18 bring her to the shower and then she would reject it. And
19 then they would have to bring her -- sit her down again and
20 bring the idea up again and then she would do it.

21 Q. Okay. I see. Thank you.

22 One other document I'd like you to take a look at is
23 page 70 -- MC76. And it's the last page of the evaluation,
24 that Peggy Stevenson testified she filled out on September
25 12th. And I just wanted to ask you if those are your
26 initials under Miss Stevenson's name. And it looks like
27 you're having trouble finding it.

28 A. No. I just wanted to look at the whole document

1 before I...

2 Q. Oh, sure. That's fine. Of course.

3 (Pause.)

4 THE WITNESS: Yes, those are my initials.

5 Q. (By MR. REID) Okay. And do you recall

6 Miss Stevenson asking you to initial the form after the --
7 after you met with her?

8 A. Yes.

9 Q. Okay. Thank you.

10 Now, I'm not going to --

11 MR. REID: We can -- we'll can get the lights on.
12 Thank you very much, Mr. Taylor.

13 THE COURT ATTENDANT: You're welcome.

14 Q. (By MR. REID) I'm not going to go through -- there
15 were a lot of documents that were signed as part of the
16 business file, and we went through those with your husband.
17 But he testified that some of the signatures were his and
18 some of the signatures were his name, but you wrote his
19 name for him.

20 A. Yes.

21 Q. Okay.

22 A. With him sitting next to me.

23 Q. Sure.

24 And it was a big stack. I'm not going to put them
25 all up there. But I did want to ask you, when you signed
26 those -- signed his name to those documents, of course, you
27 did that with his authority? He asked you to sign those
28 for him?

1 A. Yes.

2 Q. And was there any reason that you were signing his
3 name to those documents rather than your name to those
4 documents?

5 A. I signed his name because he was their son.

6 Q. Okay. How did you decide which documents you would
7 sign your name to and which documents you would sign his
8 name to?

9 A. You know, I -- I think it would have to be dependent
10 on the document. I'm not sure which documents. Like this
11 one, the one you just brought up, I put my initials on
12 because I was there.

13 Q. Okay. So was there any -- did you have any practice
14 of when you would decide to sign your husband's name versus
15 when you would sign your name to the document?

16 A. Not that I can recall.

17 Q. At the time you were signing your husband's name,
18 did you have any understanding whether he was -- had power
19 of attorney for your mom -- your mother-in-law?

20 A. I still --

21 MS. CLEMENT: Calls for a legal -- excuse me.

22 THE WITNESS: Sorry.

23 MS. CLEMENT: It calls for a legal conclusion. It
24 lacks foundation.

25 THE COURT: She can answer, if she can.

26 THE WITNESS: I didn't really know what power of
27 attorney was.

28 Q. (By MR. REID) Okay. And as you were filling out --

1 signing the forms that we've been talking about with your
2 husband, did you review the forms with him before you
3 signed them?

4 A. Yeah. We would both be signing a similar form
5 because mom had the exact same packet as dad had.

6 Q. Okay. So you went through the forms and then you
7 signed -- you signed his name to your -- to Joan's forms,
8 and he signed his name to Myron's forms?

9 A. I don't remember which one he was doing and which
10 one I was doing.

11 Q. Do you remember having any questions about any of
12 the forms that you were reviewing with your husband before
13 you signed them?

14 A. You know, Nancy Cordova had given him the forms, I
15 believe. And it was just like, *Just sign this packet.*
16 *It's no big deal. We just need to get it done.* So we
17 were -- you know, we would look at them together and then
18 sign them. So it wasn't -- it wasn't as formal as I think
19 you're implying.

20 Q. Okay. I just wanted -- my question was whether you
21 remember having any questions or any concerns about any of
22 the forms --

23 A. Oh.

24 Q. -- before you signed your husband's name to them?

25 A. No.

26 Q. Okay. All right. Now, during the time that your
27 mother-in-law was living at Emerald Hills, you visited her
28 about two times a week, I believe.

1 A. Two to three.

2 Q. And in terms of the communications -- and you've
3 described for us the desire to have information kind of
4 filter through you and your husband before getting to
5 Myron, so that it could be presented in a way that it
6 wouldn't upset him, right?

7 A. Correct.

8 Q. Okay. And is -- when -- when -- when your
9 mother-in-law first moved in to Emerald Hills, wasn't --
10 wasn't initially Myron the main point of contact for your
11 mother-in-law?

12 A. Well, on the face sheet we had filled out that we
13 asked for them to call Eric or I.

14 Q. Okay. Wasn't it your memory that initially Myron
15 was the main point of contact, and then it kind of evolved
16 into both Myron and Eric, and then later on was this desire
17 to try to filter the information to Myron?

18 A. No.

19 Q. Well, you weren't the contact person ever for the --
20 for your mother-in-law, correct?

21 A. It was always Eric, and then it was me and dad --
22 you know, the three of us were on all of the documentation.

23 MR. REID: Okay. With permission, your Honor, I'd
24 like to read from Mrs. Boice's deposition, page 75, line 24
25 through 76, line 2.

26 THE COURT: Is there any objection?

27 MS. CLEMENT: I'm just getting to it now, your
28 Honor. Sorry.

1 (Pause.)

2 MS. CLEMENT: No objection.

3 THE COURT: All right. Go ahead.

4 MR. REID: Thank you, your Honor.

5 So the question was: Were you the contact person
6 for issues with Mrs. Boice when she was at Emerald Hills?

7 And the answer was: I think it was Eric and Myron.
8 And then Myron was the first, and then Eric shared that
9 until it got too overwhelming for Myron.

10 Q. (By MR. REID) Did you have an understanding,
11 Mrs. Boice -- we know that Myron was very attentive and
12 loving to his husband -- to his wife -- well, at all times,
13 right? Correct?

14 A. Correct.

15 Q. And was it your understanding that Myron was
16 visiting his wife every day when she lived at
17 Emerald Hills?

18 A. Yes, he did.

19 Q. And did you have an understanding as to -- well, did
20 you ever accompany Myron when he went and visited Joan at
21 Emerald Hills?

22 A. I don't remember a time that dad was there when I
23 was there.

24 Q. Okay.

25 A. It doesn't mean it didn't happen, but...

26 Q. Sure. No. That's okay.

27 Did you have any impression as to whether when --
28 when Myron would go to visit Joan that he'd find the

1 caregiver and say, "How is she doing today," or something
2 like that?

3 A. I don't know.

4 Q. Now, we know that -- and I think you testified --
5 that on November 4th of 2008, your husband Eric, and Myron,
6 took your mother-in-law, Joan, to see Dr. Awan?

7 A. Yes, they did.

8 Q. And I think you told us -- you testified yesterday
9 that you remembered that in connection with that doctor's
10 visit, your husband had told you that someone had said
11 something to him about maybe your mother-in-law having a
12 stroke, or a small series of strokes?

13 A. Yes, that's correct.

14 Q. Okay. Do you remember as you think back now and you
15 think about learning of that -- that doctor's visit --
16 (coughing). I'm sorry. I don't have the morning -- yeah,
17 the morning goop out yet.

18 Do you remember having any conversation with your
19 husband following that November 4th visit about Dr. Awan
20 expressing the opinion or the thought that Joan had
21 advanced dementia?

22 A. No.

23 Q. Do you remember having any conversation with your
24 husband at that time about whether the doctor commented on
25 your mother-in-law's inability to stand or bear weight on
26 her right leg?

27 A. I remember that we had -- they had said something
28 like that prior to the, um -- the doctor's appointment.

1 And we were thinking, *Well, yeah. She's got some bunion*
2 *that hurts on her right leg -- or right foot.* So I could
3 see why she wouldn't stand.

4 Q. Okay. Did -- was it shared with you after the
5 doctor's visit that -- of any observations that Dr. Awan
6 made about your mother-in-law not being able to move her
7 right leg at the time of that visit?

8 A. No.

9 Q. Was it shared with you after the November 4th visit,
10 any information that Dr. Awan commented on about your --
11 your mother-in-law, Joan, having little movement of her
12 right arm and hand?

13 MS. CLEMENT: Hearsay.

14 THE COURT: Exception?

15 MR. REID: It goes to -- it goes to Mr. Eric Boice's
16 state of mind and prior inconsistent statements, your
17 Honor.

18 THE COURT: As phrased, sustained.

19 Q. (By MR. REID) Okay. Did -- after the November 4th
20 visit, did your husband say anything to you about observing
21 your mom not -- of having little movement of her right --
22 I'm going to have to start over. I apologize.

23 After the November 4th visit, did your husband say
24 anything to you about observations he made concerning his
25 mom's in -- lack of ability or inability to move her right
26 arm and hand?

27 MS. CLEMENT: Hearsay.

28 THE COURT: Overruled.

1 THE WITNESS: I can answer?

2 MS. CLEMENT: Yes.

3 THE COURT: You can.

4 THE WITNESS: Okay. Thank you. He talked mostly
5 about her not moving her leg because her foot hurt. He
6 didn't talk about her arm or her hand.

7 Q. (By MR. REID) Okay. Did he say anything to you
8 about your -- his mom's ability to swallow at the time of
9 that November 4th visit?

10 A. No, not swallowing. That I remember.

11 Q. Okay. Did he say anything to you about Dr. Awan
12 recommending against doing any kind of diagnostic test to
13 see whether or not his mom had had strokes?

14 A. Yes.

15 Q. What did he tell you?

16 A. Um, he said that Dr. Awan said there really wasn't a
17 way to diagnosis a stroke after the fact and they could do
18 an MRI but you know if -- if mom had had a stroke or had
19 arteries that were full, were we going to put her through a
20 surgery and all that kind of stuff. So it was like no, we
21 wouldn't want to do that to her.

22 Q. Sure. Okay.

23 I think -- I want to clarify. I think you said
24 this, but I wasn't entirely clear.

25 Did -- did your husband indicate to you after the
26 November 4th visit that Dr. Awan was going to write an
27 order to have a physical therapist -- from Kaiser go see
28 your mother-in-law at Emerald Hills?

1 A. I can't specifically remember if -- remember if
2 that's how PT eventually got done or not.

3 Q. Okay.

4 A. Got ordered.

5 Q. All right. Now, you weren't ever at Emerald Hills
6 when a physical therapist was there working with your
7 mother-in-law, correct?

8 A. No, I was not.

9 Q. Okay. And during the time that -- that Joan was
10 living at Emerald Hills, did you have any understanding of
11 how often, if ever, she was being seen by a physical
12 therapist?

13 A. Hmm. Um, yes.

14 Q. Okay. What was your understanding?

15 A. Um, when Kaiser Home Health got involved and they
16 had called me a few times, Misty, she said that mom was
17 having physical therapy. And I believe after -- in a set
18 of e-mails that Lesley referenced yesterday, there was
19 always -- there was also, *The physical therapist was here*
20 *today and she trained the staff and they should know how to*
21 *take care of mom*, and all that kind of stuff.

22 Q. Okay. During the course of -- between, let's say,
23 the November visit to Dr. Awan, November 4th, and the time
24 that your mom -- your mother-in-law moved to Foothill Oaks
25 on December 4th, did you have communications with anyone
26 from Kaiser, other than Misty?

27 A. There was one other person. It was a brief phone
28 call. And I -- I can't remember even what it was about.

1 Q. So your primary point of contact with Kaiser was
2 Misty?

3 A. Misty, yes.

4 Q. And can you give us an estimate of how many times --
5 let's focus now on -- you talked about the meeting on
6 November 17th.

7 A. Yes.

8 Q. So let's use that as a time frame, and then
9 December 4th, when your mother-in-law moved. Okay?

10 In that time frame, do you have -- have a
11 recollection of how many times you were in communication
12 with Misty at Kaiser?

13 A. Hmm. Um, there were -- there were several phone
14 calls with her, either me initiating or she calling me.

15 Q. Okay. And Misty was the social worker at Kaiser,
16 correct?

17 A. You know, I -- I don't know her title. She just
18 helped with mom. She was the one that would make sure that
19 the physical therapy got ordered. She was the one that
20 kind of facilitated hospice care. And then she
21 eventually -- yeah, I think that was her role.

22 Q. Okay. And so she was the point of contact. You
23 never had any contact with the home health nurses that were
24 providing care for your mom, correct -- or your
25 mother-in-law, correct?

26 A. Not when she was at Emerald Hills.

27 Q. And you didn't have any contact with Dr. Awan's
28 office while she was at Emerald Hills, correct?

1 A. Um, boy. I'm just trying to think if there was ever
2 an e-mail or something with her, but I don't think so.

3 Q. Now, the November 17th meeting which you've talked
4 about, was the -- was your conclusion at the end of that
5 meeting that the desire was to try to arrange to have
6 hospice come in and provide additional support for your
7 mother-in-law while she was at -- staying at Emerald Hills?

8 A. I would phrase it a little differently.

9 Q. Okay. How would you phrase it?

10 A. My understanding is that -- was that they -- they
11 said mom could stay at Emerald Hills and we could avoid the
12 transfer trauma if we had hospice and hospice came in and
13 provided additional care, and that they were also checking
14 with their corporate office if they could keep mom with the
15 current wounds she had. And they were going to figure out
16 whether mom could stay and then would arrange for hospice
17 if she could.

18 Q. Okay. So I want to go through a couple of documents
19 with you and see if we can get, sort of, a chronology of
20 the events.

21 MR. REID: I believe Exhibit 5005 has been admitted
22 into evidence by stipulation, your Honor.

23 And if I could approach the witness, I'll grab that
24 for her.

25 THE COURT: All right.

26 Are we done with one through five of the ones you
27 were looking at?

28 MR. REID: Yes, your Honor.

1 Q. (By MR. REID) Let's see. I've got to get the page
2 number for you.

3 A. Okay.

4 Q. Okay. If you could turn to page 101 of that -- that
5 exhibit, 5005.

6 A. I'm sorry. There's so many numbers on the bottom of
7 the page. I'm not sure what --

8 Q. That one would be --

9 MR. REID: 5005-101.

10 (Mr. Reid and Miss Clement confer.)

11 Q. (By MR. REID) Let me help you there. I'm sorry.

12 A. Thank you.

13 Q. They've been numbered quite a few times, haven't
14 they?

15 We're looking at the long number there at the
16 bottom.

17 A. Okay. Thank you.

18 MR. REID: Your Honor, with permission, could we put
19 up that page, 101?

20 THE COURT: I just want to make sure what this is.
21 This is a document out of a deposition; is that
22 correct?

23 MR. REID: This is a -- these are records from
24 Kaiser.

25 THE COURT: Okay.

26 MR. REID: Records from Kaiser.

27 THE COURT: Okay. So it's the one that says
28 "Clinical Note" at the top?

1 MR. REID: Correct. Yes.

2 THE COURT: Okay. Go ahead.

3 MR. REID: Thank you.

4 Q. (By MR. REID) At the very top, this is a note dated
5 November 19th, 2008, by Misty Baptista.

6 That's the Misty we've been talking about, correct?

7 A. Yes.

8 Q. Okay. And if we go to the body of the text, she's
9 relating a lot of information. I wanted to ask you about
10 some information that she's relating with regard to you and
11 see what your recollection is.

12 So she's commenting on these -- these efforts that
13 are taking place regarding SNF placement, skilled nursing
14 facility placement for wound care. And then she talks
15 about a discussion she had with Peggy Stevenson at
16 Emerald Hills regarding the care needs and --

17 MS. CLEMENT: Objection, your Honor. Is this a
18 question?

19 THE COURT: I'm sorry. I can't hear --

20 MS. CLEMENT: Is this a question?

21 MR. REID: Okay. All right. I'll --

22 THE COURT: No comments on the statements. Just ask
23 the question.

24 MR. REID: Okay.

25 Q. (By MR. REID) Number four. Let's jump down to
26 number four. Misty indicated that she had a telephone call
27 with patient's daughter-in-law.

28 That would be you, right?

1 MS. CLEMENT: Objection. Still, it's -- they're not
2 questions, they're comments.

3 THE COURT: If the question is, *Does she believe the*
4 *telephone call with the patient's daughter-in-law was*
5 *herself*, that question is allowed.

6 MR. REID: That would be my question.

7 THE WITNESS: Yes, I believe that was me.

8 Q. (By MR. REID) Okay. And do you recall discussing
9 with Misty the need for skilled nursing facility placement
10 due to the Stage III wound that your mother -- or
11 mother-in-law had as of November 19th, 2008?

12 A. I don't remember discussing a Stage III wound, but I
13 do remember discussing that -- what had happened at
14 Emerald Hills the day -- the couple days before --

15 Q. Okay.

16 A. -- and talking with Peggy and Nancy.

17 Q. Right. Okay.

18 Do you recall discussing with Ms. Baptista, Misty,
19 the licensing regulations that would necessitate your
20 mother-in-law going to a skilled nursing facility and --
21 I'll end it there. Do you remember a discussion about
22 that?

23 A. Yes.

24 Q. Okay. What do you remember Misty telling you about
25 the regulations necessitating a nursing home placement at
26 that time?

27 A. Misty said if the wound is a Stage III or more, it
28 was incumbent upon Emerald Hills to move mom to a skilled

1 nursing facility. But at that time, I didn't know mom had
2 a Stage III because I don't think Peggy knew -- or they
3 didn't tell me it was a Stage III.

4 Q. Okay. And then -- let's see. Then let's go down to
5 number seven because that's more -- more information
6 related to you.

7 Do you also recall having another telephone
8 conversation with Misty that day, where you stated that
9 you'd spoken with your husband and that you both were in
10 agreement to pursue hospice versus skilled nursing
11 placement at that time?

12 A. Yes, I remember that conversation.

13 Q. Okay. And then do you remember Misty telling you
14 the process for obtaining hospice and her explaining that
15 if your mother-in-law wasn't approved for hospice, then she
16 would have to go to a skilled nursing facility?

17 A. May I read it real quickly right here?

18 Q. Of course. Yes.

19 A. Thank you.

20 (Pause.)

21 THE WITNESS: Yes. I remember that discussion.

22 Q. (By MR. REID) Okay. So that was November 19th of
23 2008, those conversations.

24 A. Yes.

25 Q. If you could turn to page 5005. And then there's a
26 bunch of zeros, and it's 103.

27 Do you have that in front of you?

28 A. Yes, I do.

1 MR. REID: Okay. May we display that page, your
2 Honor?

3 THE COURT: Yes.

4 Q. (By MR. REID) So this -- I'm going to ask you if
5 you remember a conversation with Miss Baptista the next
6 day, on November 20th, in the late afternoon.

7 MR. REID: And if we'd go down into the body.

8 Q. (By MR. REID) Do you recall having a conversation
9 about that time with Misty, where Misty updated you
10 regarding information obtained from Peggy regarding
11 hospice? Do you remember a conversation like that?

12 A. Um, I'm reading.

13 Q. Sure. Go ahead.

14 A. I just -- I can't see it up there, so I'm reading
15 here.

16 Q. Yeah.

17 (Pause.)

18 THE WITNESS: Um, yeah. I remember Misty saying
19 that -- that the -- Emerald Hills had a hospice waiver
20 which meant mom could stay there and, um -- yeah. And that
21 somebody in the corporate offices of Emerald Hills had
22 approved mom staying there as well.

23 Q. (By MR. REID) Okay. Do you also recall Misty
24 telling you at that time that if hospice -- the hospice --
25 well, first of all, that Dr. Awan would have make an order
26 for hospice before that could occur?

27 MS. CLEMENT: Hearsay.

28 THE COURT: Sustained.

1 Q. (By MR. REID) Do you have any memory of
2 understanding on November 20th, 2008 that there would have
3 to be a physician order in order for a patient to go into
4 hospice?

5 A. Yes.

6 Q. Okay. And do you have a recollection of speaking
7 with -- do you have a memory -- strike that. I'll start
8 over.

9 Do you have a memory of understanding on November
10 20th, 2008 that after the order was obtained that the
11 hospice provider would also have to approve the patient for
12 hospice?

13 A. I have a memory of understanding that, but I don't
14 know that it was right here.

15 Q. Okay. And do you have a memory of understanding
16 that if either the doctor didn't give an order for hospice
17 or the hospice agency didn't approve hospice that, as of
18 November 20th, 2008, your mother-in-law would have to move
19 to a nursing home?

20 A. Um, I remember that piece, plus it was if the wound
21 was appropriate to stay at Emerald Hills.

22 Q. Okay. I'm not sure I understood that last part.

23 A. There was -- I'm sorry.

24 Q. Okay. Because of the staging of the wound, she
25 would need to move; is that what you're saying? Or -- I
26 don't understand. I'm sorry.

27 THE COURT: Wait, wait.

28 THE WITNESS: Sorry.

1 THE COURT: Could we go back. Perhaps you could
2 rephrase your question to her.

3 MR. REID: Yes, your Honor.

4 THE COURT: In fairness to both you and to the
5 witness, I was having a hard time understanding your
6 question.

7 MR. REID: Okay.

8 THE COURT: So I want to make sure we're all same
9 we're on the same page.

10 MR. REID: We will do that.

11 Q. (By MR. REID) I think you said that you were aware
12 that in order for your mother-in-law to go onto hospice,
13 you knew that the doctor had to order it.

14 A. Correct.

15 Q. And you knew you that hospice had to approve it as
16 well, correct?

17 A. You know, it was more like if the doctor approved it
18 and gave the order for it, then it was going to happen.

19 Q. Okay.

20 A. If -- if it was appropriate.

21 Q. Okay. And then if it -- if the doctor didn't order
22 it or hospice determined it wasn't appropriate, then your
23 mother-in-law would need to move to a skilled nursing
24 facility?

25 A. Only if her wound was at a Stage III or more.

26 Q. I gotcha. Okay.

27 So if the wound was less than a Stage III, if it was
28 a I or a II, she could stay at Emerald Hills anyway?

1 A. Correct.

2 Q. Gotcha. Thank you.

3 All right. If you could turn to page 104 now of
4 that exhibit.

5 A. Okay.

6 MR. REID: Okay. Now, may we put that up, your
7 Honor?

8 THE COURT: Yes.

9 MR. REID: Go ahead and bring up the --

10 Q. (By MR. REID) This is a note of a conversation that
11 I want to ask you if you have a memory of, of November
12 21st, 2008. So that's -- the last one we looked at was the
13 20th. So this would be the next day.

14 And if we could go to the body of that.

15 The first -- the first notation is actually about a
16 conversation that Peggy had with you. And I want to ask
17 you if you recall this.

18 It indicates that -- it says that the patient has a
19 Stage III wound, and even if hospice is in place, Peggy
20 states she spoke with you and indicated that they would --
21 Emerald Hills would not be able to keep your mother because
22 it had been declined by the corporate office.

23 MS. CLEMENT: Objection, your Honor. It misstates
24 the document. It's also hearsay.

25 MR. REID: I'll rephrase the question, your Honor.

26 THE COURT: All right.

27 Q. (By MR. REID) Do you have a memory of speaking with
28 Miss Stevenson on November 21st, in the late afternoon, and

1 Miss Stevenson informing you that she'd spoken with her
2 supervisors and that they had decided that -- that it would
3 not be appropriate to keep your mom -- mother-in-law at
4 Emerald Hills because of the stage of her wound?

5 A. Peggy wrote an e-mail to us, but she never spoke
6 with us, or myself.

7 Q. Okay. You recall getting an e-mail around November
8 21st from Peggy Stevenson, indicating that -- that the
9 corporate office had determined that your mother-in-law
10 would need to move to a nursing home?

11 A. No. We didn't find out about that until November
12 30th.

13 Q. Okay.

14 A. And she wrote an -- wrote it in an e-mail.

15 Q. Okay. So you don't have any memory of speaking with
16 anyone at Emerald Hills around November 21st, about four
17 days after the meeting, and being told, you know -- being
18 told words to the effect, *We're not going to be able to*
19 *keep your mother-in-law here. She needs to go to a nursing*
20 *home, correct?*

21 A. Correct.

22 Q. Okay. Now, do you have a memory of discussing with
23 Misty on November 21st, four days after the meeting --
24 having a telephone call with Misty, where she communicated
25 to you the -- Emerald Hills' decision and inability to keep
26 your mother-in-law at Emerald Hills?

27 MS. CLEMENT: Objection; it misstates the document.

28 THE COURT: He's asking her what her memory may be.

1 Objection overruled.

2 MS. CLEMENT: It's also hearsay.

3 THE COURT: He's asking her what her memory may be.
4 Objection overruled.

5 THE WITNESS: Would you mind repeating the question?

6 Q. (By MR. REID) I will.

7 A. Thank you.

8 Q. On the afternoon of November 21st, four days after
9 the meeting at Emerald Hills, do you recall having a
10 discussion with Misty, wherein she told you that
11 Emerald Hills was not going to be able to keep your
12 mother-in-law and that, therefore, we would -- "we" being
13 you and Kaiser -- would need to seek placement of your
14 mother-in-law at a skilled nursing facility?

15 A. We had -- we didn't hear about anything like that
16 until November 30th from AL -- from Peggy. And then with
17 Misty, we were talking about, you know, looking into
18 hospice, but it was still if it's going to be needed. It
19 wasn't a, *They have turned you down. They have said no,*
20 *and you need to seek placement.*

21 Q. Okay. All right. So you don't -- you don't recall
22 having a conversation with Misty around November 21st,
23 where you were told that Emerald Hills was not going to be
24 able to keep your mother-in-law and that your mother-in-law
25 would have to moved to a skilled nursing home, correct?

26 A. Correct.

27 Q. Okay. Do you have any information about efforts
28 that Misty made between -- if any efforts -- between

1 November 21st and December 1st to try to place your
2 mother-in-law in a skilled nursing facility?

3 A. Yes.

4 Q. Okay. What efforts do you know of that Misty made
5 to try to place your mother-in-law in a skilled nursing
6 facility between November 21st and December 1st?

7 A. At some point in there Misty was asked by
8 Emerald Hills to stop looking for a skilled nursing
9 facility. I can't remember what date it is, but it's in
10 one of the Kaiser records.

11 Q. I'd like to show you a document and see if this
12 refreshes your recollection.

13 MR. REID: It is in evidence, your Honor. Can I put
14 it on the board?

15 THE COURT: What's the document number, please?

16 MR. REID: Page 105.

17 THE COURT: To refresh her memory, you may only show
18 it to the witness.

19 MR. REID: Yes, your Honor. Okay.

20 MR. REID: May I approach the witness?

21 THE COURT: Yes.

22 Q. (By MR. REID) I'll ask the question.

23 Do you recall learning on or about November 24th,
24 2008, that Misty was attempting to communicate with
25 Kaiser's elder care services to try to get your
26 mother-in-law placed in a nursing home?

27 A. I didn't hear anything about that.

28 Q. Okay. So I'm going -- you're looking at the

1 document.

2 Does that document refresh your recollection of
3 having that information?

4 A. No.

5 Q. Okay. Then if -- I'd like to also ask you to take a
6 look at page 106. And ask you whether on or about November
7 26th, 2008, you had any awareness of Misty communicating
8 with the Kaiser elder care team and -- where she was still
9 waiting for the orders from Dr. Awan to transfer your
10 mother-in-law to a skilled nursing facility?

11 A. No.

12 Q. And looking at 106 does not refresh your memory; is
13 that correct?

14 A. No.

15 Q. That's correct?

16 A. That is correct.

17 Q. Okay. Okay. I would like you to turn to page 107
18 and ask you about a -- see if you have a memory of a
19 conversation.

20 MR. REID: Your Honor, with permission, can I put up
21 this page? It does specifically relate to --

22 THE COURT: Are you asking to refresh her
23 recollection, or are you going to be asking her questions
24 about a document?

25 MR. REID: I'm going to ask her questions about this
26 document, your Honor.

27 THE COURT: And this document is in evidence?

28 MR. REID: Correct.

1 THE COURT: It's not. 107?

2 MR. REID: 5005, page 107.

3 (Pause.)

4 THE COURT: Okay.

5 MR. REID: Thank you, your Honor.

6 Q. (By MR. REID) So I wanted to ask you, Ms. Boice, if
7 you recall as of December 1st, 2008 having a conversation
8 with Ms. Baptista --

9 MR. REID: If you'd bring up the body.

10 Q. (By MR. REID) -- having a conversation with
11 Ms. Baptista about the need to place your mother-in-law in
12 a skilled nursing facility and the progress of those
13 efforts to place her.

14 A. Yes, I did.

15 Q. And do you recall Miss Baptista telling you on
16 December 1st that she'd made multiple attempts to get an
17 order from Dr. Awan to facilitate the transfer, but she
18 hadn't gotten the order yet?

19 A. No.

20 MS. CLEMENT: Hearsay.

21 THE COURT: Is there an exception?

22 MR. REID: Yes, your Honor. It's impeaching.

23 THE COURT: To who?

24 MR. REID: Of her testimony.

25 THE COURT: Well, the objection is sustained.

26 Q. (By MR. REID) Was -- was it your -- is it your
27 recollection that December 1st, 2008 was the first time you
28 were aware that Kaiser was attempting to place your

1 mother -- your mother-in-law at a nursing home?

2 A. Um, I'm confused because we had talked about it with
3 Misty, and then it was this whole thing about, you know, if
4 mom's wound is not so far, then she can stay. And it
5 wasn't until November 30th, when Peggy e-mailed us, that we
6 knew she even had a Stage III. And then she didn't tell us
7 about the rest of them, of the pressure sores. And then
8 this was the day that, you know, we were pushing -- okay,
9 we now have had this very awful revelation and we need to
10 get her out of there. So Misty and I were talking about
11 the SNF placement that day.

12 Q. All right. I'd like to ask you -- well, let me
13 just -- without putting the document up, do you recall that
14 on Sunday, November 30th, 2008, the day before this
15 document we've been looking at, you sent an e-mail to Nancy
16 and Peggy saying, "I'm afraid to ask, but have you heard
17 anything? I heard nothing from the social workers this
18 week"? Do you remember sending that e-mail?

19 A. Yes, I do.

20 Q. And as of November 30th, were you expecting to hear
21 from Ms. Baptista in the week prior to that about your
22 mother-in-law's placement?

23 A. I was actually expecting to hear from Peggy and
24 Nancy.

25 Q. Do you recall telling -- sending an e-mail that
26 we've looked at to -- to Peggy and Nancy on December 1st,
27 in the evening, telling them that you heard from Misty
28 today and she is actively pursuing the skilled nursing

1 facility placement? Do you recall that?

2 A. I know I communicated that. I'm not sure -- I don't
3 have the e-mails in front of me, so...

4 Q. Okay. Let's go ahead and we'll grab them, because I
5 want to make sure you have them with you. 5015.

6 I apologize for this mess.

7 (Pause.)

8 Q. (By MR. REID) Okay. Sorry.

9 A. I didn't know where that one went.

10 Q. It's okay. This is already in evidence and we've
11 gone through it.

12 I just want to ask you if you recall sending an
13 e-mail to Peggy and Nancy in the evening of December 1st,
14 telling them that you had heard from Misty today and she is
15 actively pursuing the skilled nursing facility placement?

16 A. Yes. That was on December 1st.

17 Q. And that same day you told Peggy and Nancy that you
18 think the whole idea of getting her moved fell through the
19 cracks at Kaiser because of the holiday, correct?

20 A. Correct. I was trying to blame Kaiser so they would
21 continue to give mom the care while she was there.

22 Q. Okay. Were you aware when you wrote that that
23 Kaiser had been trying to place your mother -- your
24 mother-in-law at a skilled nursing facility since November
25 20th of 2008?

26 A. We still thought because mom -- we still thought,
27 because mom hadn't been moved, that her wound was not a
28 Stage III and that they weren't -- Peggy or Misty was not

1 pursuing care because -- or sorry. Peggy -- Misty was not
2 pursuing skilled nursing facility placement because mom was
3 going to be okay to stay at the -- at Emerald Hills and
4 would be able to get the care she needed either through
5 hospice or some other way.

6 Q. Okay. Thank you. But my question is: When you
7 wrote the e-mail to Peggy and Steve -- Peggy and Nancy in
8 the evening of December 1st and said, "I think this whole
9 idea of getting her moved fell through the cracks at Kaiser
10 because of the holiday," did you at that time have an
11 understanding that Kaiser had been making efforts to move
12 your mother-in-law to a skilled nursing facility since
13 November 20th, ten days -- eleven days earlier?

14 A. No.

15 Q. Okay. Between November 17th and December 4th, did
16 you continue to visit your mother-in-law two or three times
17 a week at Emerald Hills?

18 A. Yes.

19 Q. And was there a time that you and your family went
20 out of town during that time frame?

21 A. No.

22 Q. So you didn't go to Disneyland for Thanksgiving?

23 A. Yeah. Eric was wrong. We went the year before. It
24 was a cruise and -- we wouldn't have left mom --

25 Q. All right. So --

26 A. -- with what was going on.

27 Q. All right. So your memory is that the Disneyland
28 trip was the year before?

1 A. Yes, because it was coupled with a three-day cruise
2 to Mexico.

3 Q. So did you spend Thanksgiving Day with your
4 mother-in-law at Emerald Hills?

5 A. Not the whole day, but we visited her.

6 Q. And did you take any pictures that day?

7 A. No.

8 Q. How did you know that Eric testified in trial that
9 you got -- you all went to Disneyland for Thanksgiving in
10 2008?

11 A. Um, he asked me a couple days ago, "When was it that
12 we went to Disneyland?" And I said, you know, the year --
13 2007.

14 Q. I know that you spent very close and meaningful time
15 with your mother-in-law throughout this time frame we've
16 been talking about at Emerald Hills and The Palms.

17 Right?

18 A. Correct.

19 Q. Notwithstanding her challenges and her health,
20 that -- those were meaningful times for you?

21 A. Yes.

22 Q. And I know we -- we've seen some pictures. You even
23 would paint her toenails during that time, right?

24 A. You know, I did testify to that in my depo, and it
25 was actually my mom's toenails. My mom was in the hospital
26 around this same time.

27 Q. Oh.

28 A. So I was incorrect. I never painted Joan's

1 toenails.

2 Q. Who painted her toenails? Do you know?

3 A. Um, I hadn't seen her feet before she was at the
4 skilled nursing facility, so I don't know.

5 Q. All right. Did you see any -- any of your -- any
6 wound on your mother-in-law while she was at Emerald Hills?

7 A. When we would go in and I asked a few times, they
8 would say, *Oh, we just dressed it*, the one on her -- the
9 bunion. *We just dressed it. We don't want to undress it,*
10 *you know. We'll do it in two days. Come back then.* And
11 every time I would go in, it wasn't a good time for them to
12 take it off to see the wound.

13 Q. So my question was: Did you ever see any wound on
14 your mother-in-law when she was at Emerald Hills?

15 A. No.

16 Q. What conversations do you recall having with -- with
17 your family about your mother-in-law possibly having
18 strokes after she moved to The Palms -- I'm sorry, to
19 Foothill Oaks?

20 MS. CLEMENT: Hearsay.

21 MR. REID: I will break it down, your Honor.

22 THE COURT: Let me understand. You're asking her
23 about questions -- I'm sorry, conversations she may have
24 had with Joan Boice?

25 MR. REID: No. With the plaintiffs. With the --
26 her family members.

27 THE COURT: Okay. Break it down.

28 MR. REID: Okay.

1 Q. (By MR. REID) What conversations, if any, do you
2 recall having with your brother-in-law, Mark Boice, about
3 whether your mother-in-law had suffered a stroke or a
4 series of strokes after she moved to Foothill Oaks?

5 A. Hmm. Um, I remember, you know, snippets of
6 conversations with Nancee and Mark, particularly when Mark
7 flew out here in -- when was that? -- December to see mom.
8 Or maybe it was November. I can't remember.

9 Q. All right. Do you remember discussing strokes at
10 all with Mark Boice in November or December of 2008, as it
11 relates to Joan Boice?

12 A. I can't remember if it was specifically with Mark.
13 I mean, there were different conversations with Mark and
14 Nancee.

15 Q. Okay. Putting those two together, what do you
16 recall discussing about strokes and your mother-in-law with
17 Mark and Nancee -- or Nancee during that time frame?

18 A. I remember saying that, you know, they had mentioned
19 that she wasn't moving her right leg. And it was kind of
20 a, *Well, duh. She's got that sore on it. It hurts.* We
21 talked about that.

22 We also -- I had been in there after that -- after
23 that doctor's appointment and I actually observed mom
24 eating with her right hand. So I did not observe what they
25 had talked about at the doctor appointment. And we talked
26 about that. We also talked about if she had had a stroke,
27 there was not really a way to tell, those kinds of things.
28 And we all -- we all didn't see that.

1 Q. Okay. When you say, "we didn't see that," you mean
2 that the conversation you had with Mark and Nancee was that
3 you didn't really think she had a stroke, from your
4 perspective?

5 A. I mean, I -- I don't feel like I can answer that.

6 Q. Okay. That's fine. If you're not comfortable,
7 that's okay.

8 A. Okay.

9 Q. I want to follow up -- this is the last thing I
10 wanted to talk about, and it has to do with your
11 employment.

12 You work for Sutter Health, I understand.

13 A. Correct.

14 Q. And how long have you worked for Sutter Health?

15 A. Since 1997.

16 Q. And from what I understood from your testimony,
17 you're involved in working with the hospitals and the
18 employees of Sutter Health, when they have issues with the
19 different regulatory agencies that oversee their
20 operations.

21 Do I have that right?

22 A. Currently?

23 Q. Yes.

24 A. Not exactly.

25 Q. Okay. Has that ever been one of your roles at
26 Sutter Health?

27 A. Not with hospitals.

28 Q. Okay. With the physicians?

1 A. With the medical groups, on the outpatient side.

2 Q. So would that be physicians and nurses as well?

3 A. Um, physicians and nurses like in your doctor's
4 office.

5 Q. And is that -- is that role that you play, is that
6 as an employee in the Office of the General Counsel for
7 Sutter Health?

8 A. No. That role was more when I was working for Palo
9 Alto Medical Foundation, which is a -- an affiliate of
10 Sutter in the Bay Area.

11 Q. Okay. And I'm not going to go down there. I know
12 it will get complicated.

13 But have you worked as part of the General Counsel
14 in the General Counsel's Office for Sutter Health?

15 A. Yes, I did. For six months.

16 Q. Okay. And have you ever played any role in helping
17 Sutter defend any civil lawsuits?

18 THE COURT: Villa lawsuits?

19 MR. REID: I tried to say "civil lawsuits."

20 THE COURT: Okay.

21 THE WITNESS: I'm not sure what you mean by
22 "defend."

23 Q. (By MR. REID) Okay. Have you ever played a role in
24 looking for documents or gathering information to respond
25 to discovery in a civil lawsuit?

26 A. Tangentially. I mean, when I was at Palo Alto and
27 some of the physicians -- if a lawsuit was there, was
28 levied against them, sometimes it might have also dealt

1 with a nurse. So sometimes I might have to ask human
2 resources, *Would you please send something about the nurse.*
3 Because the physicians -- the physicians' defense was
4 handled differently. And I just dealt with more of the
5 foundation, the nurses, the lab techs, anybody who was an
6 employee of the foundation and wasn't a doctor.

7 MS. CLEMENT: Your Honor? May we be seen at
8 sidebar?

9 THE COURT: Yes. Come on up.

10 MS. CLEMENT: Thank you.

11 (Whereupon an unreported bench conference was then
12 had in open court between the Court and counsel.)

13 Q. (By MR. REID) Okay. So in addition to that then,
14 what role have you played in terms of either -- in terms of
15 assisting or working with the employees of Sutter Health in
16 defending or responding to these regulatory issues?

17 A. Um, with regulatory issues, it was more of trying to
18 prevent something from happening than responding.

19 Q. Okay. And when we -- what regulatory agencies were
20 you working with or -- or trying to avoid, let's say, in
21 that role at Sutter?

22 A. Again, it wasn't for Sutter corporate. It was for
23 Palo Alto Medical, for the physician group -- I mean, for
24 the foundation. And things like, if you pay a physician --
25 if we paid a physician, is all the contract information in
26 place first, because there's laws saying you can't pay them
27 unless there's a contract. Making sure that people were
28 documenting correctly, because the medical record is

1 important to have done. I'm trying to think what other --
2 making sure that nobody billed falsely. Putting processes
3 into place to be sure that wasn't happening.

4 Q. Thank you.

5 What I was wondering is what regulatory agencies
6 would be involved in that process?

7 A. Oh, if we had gotten into trouble, it would have
8 been the Department of Justice.

9 Q. Now, yesterday you testified that -- you agreed that
10 although this was a very shocking experience and was
11 horrifying for you to see, your mother-in-law's condition,
12 that you didn't report that to any regulatory agency.

13 Do you recall that?

14 A. Correct.

15 Q. And you didn't report it to any law enforcement
16 agency, right?

17 A. No.

18 Q. And you testified that you -- that's because you
19 know that these agencies are underfunded and understaffed,
20 and you didn't think it would be effective, I think is what
21 you said.

22 A. Um, I wouldn't say that about Department of Justice,
23 if that's what you're saying. But, yeah, like the Medical
24 Board that do investigations like that, that I had been
25 involved with, were understaffed and underpaid and had a
26 big caseload.

27 Q. All right. Now, isn't it true that the reason you
28 didn't report these -- your concerns to any law enforcement

1 agency or regulatory body was because you had decided to go
2 on a different course and you weren't sure that it would
3 be -- it would be a good idea to have the State involved
4 when you were actually pursuing a civil lawsuit?

5 A. No. That's not true.

6 MR. REID: Your Honor, I would ask to read from the
7 witness' deposition, page 213, lines 11 through 5.

8 THE COURT: Lines 11 through 5?

9 MR. REID: Oh, I'm sorry. Through 214, line 5.

10 (Pause.)

11 THE COURT: Is there any objection?

12 MS. CLEMENT: None.

13 Q. (By MR. REID) Do you recall we took your deposition
14 last October?

15 A. Yes.

16 Q. Okay.

17 Question: Okay. After you -- you said that you had
18 talked to Eric and maybe your sister about the wounds that
19 you had seen on Joan. Did you contact any state agency,
20 you know, Department of Health Services, Department of
21 Social Services, anything like that, any investigation-type
22 service?

23 Answer: You know, I thought about it, but I --
24 because she was no longer there at Emerald Hills, I wasn't
25 sure if it was still appropriate to do that. And there was
26 just so much going on with -- with just taking care of her.
27 I mean, it really -- it became really important at that
28 point that we were there, one of us, almost every day.

1 So -- and then eventually, you know, we decided we were
2 going to take a different course, and we didn't know if
3 that would be appropriate to mix with -- the stage with
4 the -- with, you know, reporting to the state agency, so...

5 Question: You mean like a lawsuit?

6 Answer: Yeah. We were calling an attorney for
7 advice. So, yeah. We did not do that at that time.

8 Question: Did you ever report what you had seen as
9 far as wounds --

10 MS. CLEMENT: Excuse me, your Honor. He's going
11 past --

12 MR. REID: Oh, apologize. I did go too far.

13 With permission, I'd like to read lines 6 through 8.

14 MS. CLEMENT: Well, only if he reads through line
15 14, I have no objection.

16 MR. REID: That's fine, your Honor.

17 THE COURT: All right. Go ahead.

18 MR. REID: Question: Did you ever report what you
19 had seen as far as wounds to any law enforcement agency?

20 Answer: No.

21 So basically you didn't report to anybody, is that
22 safe to say, outside the community or an attorney?

23 Answer: Well, we didn't, but it was reported
24 back -- the results were reported back to Emerald Hills
25 because Foothill Oaks and Emerald Hills were going back and
26 forth.

27 Q. (By MR. REID) So the only -- the only time that any
28 of your complaints were communicated to Emeritus was to --

1 what you've testified to in this trial, correct?

2 A. I don't know. I mean, I knew that happened, but I
3 don't know what else there might have been.

4 Q. And you never utilized any kind of Ethics First
5 Hotline or reached out to anybody above the community level
6 to voice any concerns you had, correct?

7 A. Once we realized how corrupt Emerald Hills was and
8 Emeritus, there's no way we were going to use an Ethics
9 First Hotline, because it wouldn't have done any good.

10 Q. Okay. So the question is: Did you make any effort
11 to communicate your concerns to anyone affiliated with
12 Emeritus outside of Emerald Hills?

13 A. We had made our concerns very known to Peggy and
14 Nancy.

15 Q. Okay. And the question I'm asking you is: Did you
16 make any effort to communicate any concerns you had to
17 anyone affiliated with Emeritus outside of Emerald Hills?

18 A. You mean after mom left?

19 Q. At any time.

20 A. Um, no.

21 MR. REID: Those are all the questions. Thank you
22 very much.

23 THE COURT: Miss Clement.

24 MS. CLEMENT: Yes, your Honor.

25 I'm sorry. I haven't premarked this exhibit, but it
26 only became apparent from the questioning.

27 THE COURT: All right. Denise, if you could come
28 in, please.

1 And if you could give Mr. Reid a copy of the --

2 MS. CLEMENT: Oh, yeah. I've got it.

3 THE COURT: I think we're up to 5041.

4 MS. CLEMENT: Actually, we had a lot reserved from
5 the plaintiffs' side, and this would be the next one we
6 reserved, 303.

7 THE COURT: 303?

8 MS. CLEMENT: Yes, your Honor.

9 (Pause.)

10 THE COURT: Is this for me or is this the --

11 MS. CLEMENT: That's for you.

12 THE CLERK: That's yours. That's yours.

13 MS. CLEMENT: Oh, this is for the --

14 THE CLERK: That's for you.

15 MS. CLEMENT: Sorry, Judge.

16 This is for the judge.

17 THE COURT: Just one second.

18 Is this the original to go into the binder?

19 MS. CLEMENT: This --

20 THE COURT: Excuse me.

21 Where is the original to go in the binder?

22 THE CLERK: That's this one.

23 THE COURT: Terrance, could you take that, please.

24 MS. CLEMENT: Thanks, Terrance. Thank you.

25 THE COURT ATTENDANT: You're welcome.

26 **(Joint Exhibit Number 303 was marked for**
27 **identification.)**

28 THE COURT: Not my binder. The witness' binder.

1 THE COURT ATTENDANT: All right.

2 THE COURT: Can I see that document for a moment.

3 (Pause.)

4 THE COURT: All right.

5 THE COURT ATTENDANT: A lot of papers, huh?

6 THE COURT: Okay. Let's proceed, please.

7 MS. CLEMENT: Thank you, Judge. Sorry for that
8 delay.

9 REDIRECT EXAMINATION

10 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of
11 the Plaintiffs:

12 Q. Kathleen, can you take a minute to look at Exhibit
13 303.

14 A. Okay.

15 Q. Do you remember in your deposition Miss Wells took
16 your deposition all day?

17 A. Yes.

18 Q. And do you remember that you were asked to produce
19 documents at your deposition?

20 A. Yes.

21 Q. And you brought those documents with you?

22 A. Yes, I did.

23 Q. And Exhibit 303, that was the exhibits that were
24 responsive to Emeritus' 23rd request for production of
25 documents to you in the deposition notice? If you look at
26 the first page.

27 A. There's only one -- oh, sorry.

28 Q. That's all right.

1 A. It says request number 23 on it.

2 Q. Okay. And did you gather -- in response to the
3 deposition notice and subpoena, did you gather every single
4 page that you had concerning your mom?

5 A. Yes.

6 Q. And can you tell us, is -- the second page of
7 Exhibit 303, is that a one-page list that you prepared?

8 A. Yes.

9 Q. Okay. And tell the jury, what is this list?

10 A. Um, I just had a habit of taking notes when I was on
11 the phone. So this was -- these were my notes from
12 conversations with Misty from Kaiser.

13 Q. And did you start documenting your conversations
14 with your first communication with Misty on November 19th,
15 2008?

16 MR. REID: Your Honor, this is leading.

17 THE COURT: Sustained.

18 Q. (By MS. CLEMENT) When did you first start
19 documenting your communications with Misty?

20 A. On November 19th, 2008.

21 Q. And did you put on this piece of paper every
22 conversation you had with Misty?

23 A. Hmm, no.

24 Q. Was there any conversations of significance that you
25 left out on this communication with Misty, or your notes
26 from Misty?

27 A. No.

28 Q. And in other words, did you keep a note every time

1 you talked to her?

2 A. If there was something significant that she had or
3 information I needed to remember or pass on to Eric, then,
4 yes, I would write it down.

5 MS. CLEMENT: At this time, your Honor, the
6 plaintiffs would seek to move into evidence Exhibit 303.

7 THE COURT: Any objection?

8 MR. REID: No, your Honor.

9 THE COURT: 303 is admitted.

10 **(Joint Exhibit Number 303 was received into**
11 **evidence.)**

12 Q. (By MS. CLEMENT) When Mr. Reid was asking you
13 questions, you may have misspoke. You said you heard on a
14 e-mail from Peggy on November 30th.

15 Was November 30th the day you wrote to Peggy about
16 wondering if mom's bedsore had gotten smaller?

17 MR. REID: It's leading, your Honor.

18 THE COURT: Sustained.

19 MS. CLEMENT: Okay. It's foundational, your Honor.
20 But I can pull out the 5015, if defense wishes us to go
21 through all this.

22 THE COURT: Miss Clement.

23 MS. CLEMENT: Okay, Erik. 5015, please.

24 Q. (By MS. CLEMENT) You can just look up here, if you
25 can see it.

26 A. Okay.

27 Q. What was the date that Peggy wrote to you about --
28 telling you that your mom had some more skin areas that

1 were problematic?

2 A. December 1st.

3 Q. Okay.

4 MS. CLEMENT: Erik, can you put up 303, second page.
5 Make it big. Start at the top. All the way to
6 11-20. Stop right there. Perfect.

7 Q. (By MS. CLEMENT) Okay. Is this your first
8 communication with Misty, on November 19th, 2008?

9 A. Yes, yes.

10 Q. And can you tell the jurors what "anything against"
11 meant in this communication with Misty.

12 A. Misty had asked if anybody in the family was against
13 having hospice for mom, to provide additional care at
14 Emerald Hills.

15 Q. And what about the second sentence?

16 A. Um, I had asked her, *Well, what's the different*
17 *kind -- if hospice were at Emerald Hills and they were*
18 *providing services there versus mom in a SNF, what would*
19 *the difference between the care be?* And she had said that
20 in a skilled nursing facility, an example was that they
21 could give her antibiotics, whereas if she was still at the
22 Emerald Hills with hospice, she wouldn't be able to get
23 antibiotics.

24 Q. And what's the next sentence about "Joyce"?

25 A. Um, that they do have a hospice waiver. And I can't
26 remember if I wrote "Joyce" because Joyce told that to
27 Misty or was Joyce the one other person I heard from. I
28 can't remember.

1 Q. And when it says they do have a hospice waiver, who
2 did "they" refer to?

3 A. That was -- they were saying that Emerald Hills does
4 have a hospice waiver. My understanding was, meaning that
5 then they could keep mom if hospice was there.

6 Q. And what's the next little paragraph? "Hospice
7 services," what is that?

8 A. I asked for more detail on what kinds of things
9 hospice would provide, and those were some of the things
10 that she mentioned.

11 Q. Can you tell the jurors, if they can't read your
12 writing -- maybe, it's pretty good, but tell us what that
13 meant.

14 A. Sorry. Yes. That they would provide a nurse, and
15 that they would help with dressing changes for the wounds,
16 and that there was a social worker that would then be
17 involved with mom.

18 Q. And then what about the last one?

19 A. We had been providing, you know, undergarment and
20 incontinence supplies for mom, and so I had asked what
21 we would need to bring or how that would work. So she just
22 told me that if you're on hospice they would have provided
23 those.

24 Q. And then the bottom of the page, when was the next
25 time you heard from Misty?

26 A. On the next day, on November 20th.

27 Q. At what time?

28 A. 3:36 p.m.

1 Q. Okay. And what did you learn at that time?

2 A. Um, I got back to her saying that as a family we had
3 talked and we realized that hospice didn't mean that mom
4 was going to die. And it was a way of getting extra care
5 for her so she could stay at Emerald Hills and be cared for
6 properly.

7 Q. And when was the next time you heard from Misty?

8 A. Um, I heard from her on November -- December 1st.

9 Q. And what was that about?

10 A. We were talking about the skilled nursing facility
11 placement now that mom had -- well, Emerald Hills had said
12 they couldn't keep her for whatever reason and that she
13 had -- there had been that care alert from Emerald Hills
14 and they had said she had a couple of additional sores, so
15 we were just talking about what we would need to do to
16 transfer mom from Emerald Hills to the skilled nursing
17 facility.

18 MS. CLEMENT: Thanks, Erik.

19 Q. (By MS. CLEMENT) When Mr. Reid was asking you
20 questions about mom liking to watch people, can you explain
21 further what that meant in terms of activities.

22 A. Yes. She was a person that would -- in a crowd, she
23 would kind of, you know, sit back and watch and see what
24 was happening. And then she would warm up eventually. She
25 was shy. And -- but when we were around her, she was
26 extremely active. She was not shy at all. She was
27 wonderful in that way.

28 Q. Did you see your mom participate in activities at

1 The Palms?

2 A. Oh, yes. She -- she would -- again, she'd observe
3 at first, and then they'd say, "Joan, would you like to do
4 it?" And she would. She loved the crafts and singing.

5 Q. Thank you.

6 MS. CLEMENT: No further questions.

7 MR. REID: Just a couple.

8 RECROSS-EXAMINATION

9 BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the
10 Defendant:

11 Q. Did you ever learn from any source what
12 determination would need to be made in order for your --
13 for Dr. Awan to issue an order for hospice for your
14 mother-in-law?

15 A. I'm not sure what you mean by a determination to be
16 made.

17 Q. What criteria are you aware of, if any, that
18 Dr. Awan would be -- have to consider before signing an
19 order to -- for hospice for your mother-in-law?

20 A. No. Nobody -- we didn't have conversations about
21 that.

22 Q. So you had no conversations with Misty about what
23 limitations -- what might prevent Dr. Awan from ordering
24 hospice?

25 A. No.

26 Q. What conversations with Misty did you not write down
27 on your list?

28 A. Oh, I don't know.

1 MR. REID: That's all I have. Thank you.

2 THE COURT: Anything else?

3 MS. CLEMENT: Just, your Honor, I'd seek to move
4 into evidence Exhibit 303.

5 THE COURT: Any objection?

6 MR. REID: No, your Honor.

7 THE COURT: 303 is admitted.

8 MS. CLEMENT: And Exhibit 159.

9 THE COURT: I'm sorry. 303 had already been
10 admitted, so...

11 MR. REID: Yeah.

12 MS. CLEMENT: Oh, sorry.

13 Exhibit 159, Mrs. Boice's prepared agenda for the
14 meeting with Emerald Hills directors.

15 MR. REID: I do have an objection to that, your
16 Honor.

17 THE COURT: Okay. Let's see -- I'll take that up on
18 a break.

19 Let me see if the jurors have any questions, and
20 then I'm going to let everybody go on their break.

21 **(Joint Exhibit Number 159 was marked for**
22 **identification.)**

23 MS. CLEMENT: Okay.

24 THE COURT: Do you have any questions for the
25 witness?

26 Okay. Ladies and gentlemen, I'm going to review
27 these with counsel and deal with this evidentiary issue.

28 So be back, ready to go, at 11:00 o'clock. Leave

1 your notebooks on the chairs. Remember the admonitions.

2 We're in recess.

3 **(The following proceedings were then had in open**
4 **court, outside the presence of the jury.)**

5 THE COURT: You can step down.

6 THE WITNESS: Thank you.

7 THE COURT: Okay. Can we all be seated, please.

8 All right. What is the objection to 159?

9 MR. REID: My objection, your Honor, is that counsel
10 did not reference this document in her examination. She
11 didn't lay a foundation for the entirety of the document.
12 She didn't move it into evidence while she was examining
13 the witness, so I did not examine the witness about this
14 document. Offering it now is beyond the scope of my
15 cross-examination, and it should not come into evidence.

16 THE COURT: Terrance, could you pull the document
17 for me, please.

18 With respect to timing, an attorney can offer into
19 evidence a document at any time up until the matter is sent
20 to the jury for consideration. So the timing per se is not
21 an issue for the Court.

22 You believe that this document was not reviewed with
23 this witness; is that correct?

24 MR. REID: It was -- she was asked questions about
25 parts of it, but not all of it.

26 THE COURT: She was asked whether or not she created
27 the document and whether or not it was hers. She
28 authenticated it. She laid a foundation for it. She

1 THE COURT: Okay. Are we ready now?

2 MS. CLEMENT: Yes, we are.

3 MR. REID: Yes, your Honor.

4 THE COURT: Bring in the jury.

5 **(The following proceedings were held in open court, in the**
6 **presence of the jury:)**

7 COURT ATTENDANT: Please come to order. Department 45
8 is once again in session. You may be seated.

9 THE COURT: All right. Mrs. Boice, we allow our
10 jurors to ask questions and so I will ask you the question.
11 If you would please turn and respond to the jury.

12 Why did you not take a more aggressive approach
13 considering your various concerns regarding moving Joan
14 Boice rather than wait upon Emeritus to act?

15 THE WITNESS: I have to tell you, I ask myself that,
16 um, pretty much every day.

17 Um, we -- when we first started having the concerns we
18 thought, okay, these are glitches. You know, um, they
19 didn't know that mom always needed to have the walker right
20 there. Um, they didn't know that, um, that she was going to
21 get up and walk. They thought she sat in a wheelchair, you
22 know, and we were having this communication, ongoing
23 dialogue.

24 The first time that I really felt like, um, it was --
25 it was really going to be bad or that something was bad was
26 when I found out that Alicia had not, um, ordered the
27 physical therapy and she had said she would and then she
28 didn't. And so right when we did that, we asked Peggy and

1 Nancy for the meeting. And it was a little tricky because
2 they, um, weren't available, but we were able to get in.

3 And then I brought, um, you know, a long list, agenda
4 with very detailed bullet points on what we were concerned
5 about. And we put everything in there from, you know,
6 serving mom chicken bones to -- um, I mean, chicken with
7 little bones in it where she shouldn't be eating that to
8 what is this bunion pressure sore thing. We covered, um,
9 the thing that happened with the -- I don't know if -- I'm
10 assuming you heard about the --

11 THE COURT: Mrs. Boice, I'm going to ask you to please
12 just --

13 THE WITNESS: I apologize.

14 THE COURT: -- focus on --

15 THE WITNESS: Okay. So --

16 THE COURT: -- the question.

17 The question is, why didn't you do it, why didn't you
18 take a more aggressive approach?

19 THE WITNESS: We -- we thought we were taking the
20 right approach. We thought we were taking the aggressive
21 approach by, um, by talking with Nancy and Peggy and then we
22 thought that we had done the right thing. We went to her
23 and -- they were going to make it better. They were going
24 to address all of these concerns.

25 And it wasn't until, um, probably December 1st --
26 *yeah, it was December 1st* -- when we realized, oh, my gosh,
27 what -- what happened. And then not really understanding it
28 until the skin check at the skilled nursing facility.

1 THE COURT: Your husband, Eric Boice, testified that
2 he did not read all of the documents you signed and was not
3 aware of the content of the documents.

4 Why didn't you insist that he read them as you had
5 signed most of them or all of them for him?

6 THE WITNESS: I -- may I clarify one thing in the
7 question?

8 THE COURT: Why didn't you insist that he read them as
9 you had signed most of them for him?

10 THE WITNESS: Okay. Um, I didn't insist that he read
11 them because we had duplicate packets and we were cursory
12 going through them together. So I only signed half and he
13 signed half for mom and dad. And it was after-the-fact as
14 well, um, and was presented to us as, This is just paperwork
15 that needs to get done. So we -- you know, it was just so
16 much, all of the lawyer language and stuff, so we just kind
17 of went through it and signed together.

18 Does that answer the question?

19 THE COURT: I don't know. We will find out.

20 THE WITNESS: Oh, okay.

21 THE COURT: Do you believe anyone reviewed Joan
22 Boice's pre-placement appraisal information during her stay
23 at Emerald Hills?

24 THE WITNESS: I didn't see any evidence that they read
25 anything that I wrote other than, um, you know, what Peggy
26 wrote down on the quick assessment that she did. Um, yeah,
27 I -- I don't think they did.

28 THE COURT: Do you think anyone reviewed Joan Boice's

1 resident identification and emergency forms during her stay
2 at Emerald Hills?

3 THE WITNESS: I would say that's questionable too
4 because there -- all of the phone numbers were on there, and
5 we only got called maybe twice the whole time she was there.
6 So I doubt that they did.

7 THE COURT: The jury has heard that from time to time
8 you may have consulted with people that you knew at Sutter.

9 Did you discuss Joan Boice's situation regarding her
10 medical conditions with any Sutter doctors?

11 THE WITNESS: I discussed, um, the -- the bunion --

12 THE COURT: The question is a yes or no.

13 THE WITNESS: Oh. Oh, yes. Yes, I did.

14 THE COURT: Okay. So if so, what did you discuss?

15 THE WITNESS: I discussed the bunion and what is a
16 bunion and that's when I found out it was maybe a pressure
17 sore.

18 Um, I also discussed after mom had moved to the
19 skilled nursing facility what -- how do pressure sores form
20 and, um, can -- can they heal and can anything be done when
21 you have as many as she had.

22 THE COURT: The jury has heard about your list of
23 bullet points of information that you brought to the meeting
24 with Emeritus staff.

25 Did anyone with Sutter assist you with preparing those
26 bullet points that you brought to the meeting?

27 THE WITNESS: No.

28 THE COURT: Did anyone in Sutter's legal department

1 assist you in preparing for that meeting?

2 THE WITNESS: No. It was a private matter, so I
3 wouldn't have brought it to anyone there.

4 THE COURT: Did you ever show any Sutter doctors the
5 photos you took of Mrs. Boice?

6 THE WITNESS: No. The only people that saw it were --
7 was Eric right after the fact, and then eventually we sent
8 them to Ms. Clement's office.

9 THE COURT: When did the family make the decision --
10 and they are looking for a date or a time frame --

11 THE WITNESS: Okay.

12 THE COURT: -- to sue Emeritus and Emerald Hills?

13 THE WITNESS: To actually sue was probably, um, two
14 months after she passed away. We contacted Lesley though, I
15 don't know, probably two weeks after she had passed away --
16 excuse me -- not passed away. Let me back up.

17 Two months after she had moved into the Palms -- to
18 the Emerald Hills and we had contacted Lesley about two
19 weeks after she, um, moved into skilled nursing -- did I say
20 that right? Let me try it one more time. I'm sorry.

21 It was two weeks after mom moved into skilled nursing
22 we contacted Lesley Clement's office and were asked to fill
23 out a in-take form --

24 THE COURT: Don't give us a lot of information. They
25 are looking for dates.

26 THE WITNESS: I'm sorry. I'm sorry.

27 And then two months later I think is when there was
28 the actual decision to make a lawsuit.

1 THE COURT: Did any attorney you spoke with ever
2 suggest to you that you contact the Department of Social
3 Services with your complaints? That is a yes or no answer.

4 THE WITNESS: No.

5 THE COURT: At any time did you supply Emerald Hills,
6 "you", meaning you or your family members, supply Emerald
7 Hills with pressure-reducing bedding or clothing, etcetera?

8 THE WITNESS: No. We didn't know such a thing
9 existed.

10 THE COURT: When you were told that Joan was tired
11 from walking, the time you went in, up and down the hallway,
12 did you follow-up and ask who had been assisting her?

13 THE WITNESS: Yes. And they would tell me which
14 caregiver had been supposedly working with mom.

15 THE COURT: You reported that Nancy Cordova stated
16 that the pressure ulcer did not appear infected; however,
17 quote, the swelling has increased, closed quote.

18 With increased swelling, did you think the pressure
19 ulcer was still infected?

20 THE WITNESS: I'm sorry, could you read that again?

21 THE COURT: Nancy Cordova stated that the pressure
22 ulcer did not appear infected; however, quote, swelling has
23 increased, closed quote.

24 With increased swelling, did you think the pressure
25 ulcer was still infected?

26 THE WITNESS: Um, if I understand the question
27 correctly, I did not know that the pressure ulcer had been
28 infected. Peggy had said that it wasn't. And I didn't know

1 why she mentioned the increased swelling. That -- that
2 was -- I didn't -- I thought it was just side information.
3 I wasn't sure what that meant.

4 THE COURT: After moving in, um, Joan and Myron Boice
5 and before the family meeting, were you ever able to
6 communicate with Peggy Stevenson?

7 THE WITNESS: No. She was either out of the building,
8 in a meeting, or did not return a phone call.

9 THE COURT: Did you try and contact her prior to your
10 meeting?

11 THE WITNESS: Yes. Several times.

12 THE COURT: Could you please tell us how well Joan
13 responded to cuing and break it down by -- at the beginning
14 of her time at Emerald Hills, the middle of the time of her
15 Emerald Hills stay, and at the end of her stay at Emerald
16 Hills?

17 THE WITNESS: Um, at the beginning of her stay, um,
18 most of the cuing that I observed was either for eating or
19 walking. Um, she didn't need a lot of cuing for eating, she
20 enjoyed doing that and did it quite a bit. Um, and, um, for
21 walking, it would just -- we would have to help her stand up
22 but there was no cuing, um, to say, now put one foot in
23 front of the other or anything.

24 Um, in the middle I, um, I did observe that she needed
25 a little bit of cuing and -- and that was a concern that it
26 wasn't happening.

27 Um, by the end of her stay she -- she wouldn't --
28 she -- yeah, she wouldn't eat unless you really said, okay,

1 now pick it up. But she kind of didn't even want to eat at
2 that point.

3 THE COURT: Do you know who ultimately determined that
4 the state of the pressure ulcers were too much for Emerald
5 Hills to handle?

6 THE WITNESS: Hum.

7 THE COURT: I left something out here.

8 Do you know who determined the pressure ulcers were
9 too much for Emerald Hills to handle with the help of
10 Hospice?

11 THE WITNESS: I don't know who eventually made that
12 final call. It went on for about a week and a half making
13 the call.

14 THE COURT: Could you please provide the jury with an
15 estimate or your best estimate of how often you visited with
16 Joan while she was in Emerald Hills?

17 THE WITNESS: Yeah. It was two to three times a week
18 depending on the week and if I was traveling.

19 THE COURT: In the period from September 12th to
20 November 3rd, how many times would you say that you would
21 walk with Joan?

22 THE WITNESS: I'm sorry, the dates again, please?

23 THE COURT: September 12th to November 3rd.

24 THE WITNESS: Um, so I -- I didn't see her walk after
25 whenever her fall was. We were told that she was walking --
26 the fall in September. Um, we were told that she was
27 walking, but I didn't physically see her. Um, between
28 September 12th and the fall, you know, we saw her walk or

1 we -- we would stand her up and walk her down the hallway,
2 um, walk into another area with her and she -- she would
3 have her walker, so she needed that.

4 THE COURT: Between September 12th and November 3rd,
5 how many times did you observe her eating?

6 THE WITNESS: Hum. In November -- I'm sorry. What is
7 the last date?

8 THE COURT: 3rd.

9 THE WITNESS: 3rd? Thank you.

10 Probably five or six meals because I would stop in
11 either at lunch or dinner and then sometimes I would bring
12 her a snack, so that's -- I would see what she was doing at
13 that point.

14 THE COURT: Now we are focusing on the month of
15 October.

16 THE WITNESS: Okay.

17 THE COURT: During the month of October if you
18 personally didn't see her walking or eating much, did you
19 form an impression that there was something wrong in
20 October?

21 THE WITNESS: Hum. I -- I don't -- I didn't
22 necessarily form an impression that there was something
23 wrong with mom. I -- I was, um, feeling weird but didn't --
24 I couldn't put my hand on it that I would go in and they
25 would say she had been walking but I didn't see it. So, um,
26 you know, she liked to walk, dad wanted her to walk, I
27 wanted her to walk but we didn't physically see it.

28 THE COURT: Okay. The question was --

1 THE WITNESS: I'm sorry.

2 THE COURT: -- did you think something was wrong?

3 THE WITNESS: I did -- not with mom, no.

4 THE COURT: Okay. In the month of October, did you
5 personally try to make her walk?

6 THE WITNESS: No, I did not because she was usually in
7 bed or in a wheelchair. And, frankly, I have a really bad
8 back so it's not good to -- I would have to pull her up.

9 THE COURT: At the time you had the meeting on
10 November 17th with Nancy and Peggy, or around that time, did
11 you notice any odor coming from Joan Boice's body?

12 THE WITNESS: Um, on occasion we would notice body
13 odor, like she hadn't been bathed properly, but I didn't
14 notice odor for any, um, you know, the pressure sore odor.
15 I did not notice that.

16 THE COURT: In the time frame November 17th through
17 December 4th --

18 THE WITNESS: Okay.

19 THE COURT: -- why is it that you did not check Joan
20 Boice's body for problems?

21 THE WITNESS: Um, I did ask a few times to see the one
22 on her foot and that's when I was told that somebody had
23 just dressed it. Um, the one time that I saw it bleeding
24 through her foot after November 4th, um, I asked about it
25 and they said they would get to it and, um, it just didn't
26 work out though that I was there when they actually got to
27 it.

28 Um, let's see. As far as checking her whole body, mom

1 was a very private person and it would have mortified her
2 had a family member taken off her pants and looked at in
3 between her legs or that -- and I never dreamed that I would
4 need to do that, so I did not -- I -- I didn't check around,
5 you know, her private areas to see if there was something
6 wrong.

7 THE COURT: Are you aware or did you learn from any
8 source whether the Kaiser home health personnel checked Joan
9 Boice's body for new pressure ulcers?

10 THE WITNESS: Hum. Um, I -- I wasn't aware of, you
11 know, what their protocol was, um, whether people were
12 supposed to point them out to her or they were supposed to
13 check. I -- I wasn't aware of any of that.

14 THE COURT: Okay. What was your understanding, if
15 anything, about what the physical therapists were doing when
16 they were with Joan Boice?

17 THE WITNESS: My understanding was that they were
18 helping her stretch. Um, you know, kind of like when I get
19 physical therapy for a back thing, you know, just helping
20 her, because she did have a bad back. At some point in
21 there, I think it was, you know, after the 1st, I knew that
22 there was wound care going on because it had been ordered,
23 and I don't know if that was a physical therapist or a wound
24 care nurse doing that.

25 THE COURT: Okay. Focusing on Myron Boice for a
26 moment and after he left Emerald Hills, where did he go?

27 THE WITNESS: Um, he left -- after his contract at
28 Emerald Hills was up, he -- he went over across the street

1 to Auburn Oaks, which is an independent living facility.

2 THE COURT: And what is your understanding of what
3 services, if any, are provided at that facility?

4 THE WITNESS: They would provide, um, three meals a
5 day, um, housekeeping, activities that they could go to.
6 Um, they didn't provide anything like giving medications
7 or -- they might give them rides somewhere. Um, it was more
8 like he had an apartment and was part of this bigger
9 community that had activities and some services, but they
10 didn't come into his room and assist him with anything.

11 THE COURT: Okay. Can we please put up Peggy
12 Stevenson's e-mail to this witness?

13 Okay. I'm going to walk through this with you because
14 this juror was not sure of some of the timing on this.

15 THE WITNESS: Okay.

16 THE COURT: What was the date of Peggy's e-mail to
17 you?

18 THE WITNESS: It was on December 1st at 12:25 p.m.

19 THE COURT: And who, if anyone, was cc'd on the
20 e-mail?

21 THE WITNESS: Um, my home e-mail address. So there my
22 work one was on the top and home was on the cc.

23 THE COURT: Okay. Other than this e-mail that you
24 received from Peggy Stevenson on December 1st, 2008, did you
25 receive any other e-mails from anyone regarding the content
26 of this document?

27 THE WITNESS: Referring to the pressure sores content
28 or any content in there?

1 THE COURT: Any of the content in there.

2 THE WITNESS: Okay. We did not receive any additional
3 communication from Emerald Hills about the pressure sores.
4 Um, we did receive communications from Misty. I think
5 that's it. I think that covers it.

6 THE COURT: Okay. May we have the lights, please?

7 Ms. Clement, do you wish to follow-up?

8 FURTHER REDIRECT EXAMINATION

9 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of
10 the Plaintiffs:

11 Q The Misty communication, was that by e-mail or
12 telephone?

13 A Um, most of Misty's -- well, no, all of it was by
14 telephone.

15 Q Did either Peggy or Nancy or anyone from Kaiser
16 suggest to you that you should be purchasing
17 pressure-relieving or pressure-reducing devices for Joan at
18 any time?

19 A No. Only, um, um, the skilled nursing facility did.
20 And, actually, they brought them in on their own, a special
21 bed.

22 MS. CLEMENT: That's it, your Honor.

23 FURTHER RECROSS-EXAMINATION

24 BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the
25 Defendant:

26 Q Your father-in-law, Myron, did he wind up requiring
27 any kind of home health nursing services or Hospice at -- at
28 his community that he moved to?

1 A Um, he eventually did, yes.

2 Q Okay. Um, was that provided by Kaiser or somebody
3 else?

4 A Um, it was provided by Sutter Auburn Faith Hospice.

5 MR. REID: Okay. Thank you.

6 THE COURT: Anything else, Ms. Clement?

7 MS. CLEMENT: No, your Honor.

8 THE COURT: All right. This witness remains subject
9 to recall but she can step down now.

10 Thank you very much.

11 THE WITNESS: Thank you.

12 Thank you.

13 THE COURT: Terrance.

14 Who is our next witness?

15 MS. CLEMENT: Audrey Withers, um, Emeritus human
16 resources director for California via video.

17 THE COURT: All right.

18 MS. CLEMENT: Thank you, your Honor

19 THE COURT: All right. How long is this video?

20 AUDIENCE MEMBER: Eight minutes.

21 THE COURT: Okay. We have another witness by video,
22 ladies and gentlemen.

23 **(The following video excerpt was then played in open court:)**

24 TESTIMONY OF

25 AUDREY WITHERS, Witness called on behalf of the Plaintiffs,

26 DIRECT EXAMINATION

27 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of
28 the Plaintiffs: